United States Court of Appeals

for the Second Circuit

APPENDIX

ONLY COPY AVAILABLE

ORIGINAL

74-2281

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

against

PENT-R-BOOKS, INC.,
Defendant-Appellant.

CONSOLIDATED APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

CONSOLIDATED JOINT APPENDIX.

Volume III—Pages 1249a to End.

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UNITED STATES COURT OF APPEALS
FILED
NOV 10 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1975

(7590)

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UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF NEW YORK.

----------X

UNITED STATES OF AMERICA,

Plaintiff,

v.

PENT-R-BOOKS, INC.,

Defendant.

----------X

CIVIL ACTION NO. 72 CIV. 601.

DOCKET ENTRIES

72C601 U.S.A. v. PENT R BOOKS INC.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
5/9/72	Complaint filed. Summons issued.	1JS5
5-26-72	Summons returned and filed. Deft srvd 5-25-72.	2
9-27-73	Notice of motion ret 10-15-73 and memo in suppor of motion for summary judgment filed.	3/4
11-29-73	Notice of cross motion and memorandum in support of deft's cross motion for summary judgment filed.	5/6
7-29-74	By DOOLING, J. - Memorandum and order dtd 7-26-74 granting pltff's motion for summary judgment & directing Clerk to enter judgment filed.	7
7-30-74	JUDGMENT dtd. 7-26-74 ordering deft to refrain from any further mailings to Richard H. Coffrin etc. filed. (p/c to attys)	8
9-19-74	Notices of appeal filed. Duplicates mailed to C of A & pltff.jn	9/10

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R BOOKS, INC.,

Defendant.

- X

COMPLAINT

Civil Action No.

Plaintiff, UNITED STATES OF AMERICA, by its attorney, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, complaining of the defendant, alleges:

1. This Court has jurisdiction of this action pursuant to Public Law 90-206, Sec. 301 and Title 28, U.S.C., Sec. 1345.

2. The defendant is a New York corporation having an office for the conduct of business at 203 Kings Highway, Brooklyn, New York.

3. On or about March 18, 1969, defendant mailed or caused to be mailed through the U. S. mail to P. H. Coffin, Newark, New Jersey (hereinafter referred to as "addressee") material offering for sale certain advertisement of Photographic Manual of Sexual Intercourse.

COMPLAINT

4. The said item was mailed from Brooklyn, New York, within the Eastern District of New York.

5. The above-described mailing consisted of photographic advertisements which the addressee believes to be erotically arousing or sexually provocative.

6. The addressee requested the Postmaster General to issue an order directing defendant, its agents or assigns, to refrain from further mailings of such material to him.

7. Upon receipt of this request and pursuant to Public Law 90-206, Sec. 301, on April 4, 1969, the local Postmaster, by order of the Postmaster General, issued Prohibitory Order No. 6370, which ordered and directed defendant, its agents and assigns, to delete his name from any sales or transactions involving lists bearing his name, effective 30 days after receipt of the order.

8. A copy of the order was mailed to defendant by registered mail on or about the date it bears.

9. Thereafter, the Postmaster General had reason to believe that defendant or someone acting on its behalf violated the order.

COMPLAINT

10. On or about May 15, 1969, in violation of Prohibitory Order No. 6370, defendant, or someone acting on its behalf, mailed or caused to be mailed through the United States mail to the addressee, material such as that described in paragraph 3 of the complaint.

11. On June 23, 1969, the local Postmaster, by order of the Postmaster General, issued a complaint advising that evidence had been received that defendant, or someone acting on its behalf, had violated Prohibitory Order No. 6370, and advising defendant that any response for hearing had to be filed within 15 days.

12. A copy of the complaint was mailed to defendant by registered mail on or abou the date it bears.

13. Defendant did not request a hearing or otherwise respond to the complaint.

14. On November 19, 1969, a determination was made that defendant or someone acting on its behalf had violated Prohibitory Order No. 6370.

15. A copy of the determination was mailed to defendant by registered mail on or about the date it bears.

16. The Postmaster General thereafter requested the Attorney General, pursuant to the provisions of Public Law 90-206, Sec. 301, to make application to a district court of the United States for an order directing defendant to comply with the order.

COMPLAINT

WHEREFORE, plaintiff, UNITED STATES OF AMERICA, prays:

a. That the court enter judgment herein requiring defendant, its agents and assigns, to comply with Prohibitory Order No. 6370, and more specifically, that this Court order and direct defendants, its agents and assigns, in conformity with this order to cease and desist from making any further mailings to the designated addressee from all mailing lists owned or controlled by defendant, its agents or assigns, and to refrain from selling, renting, exchanging, or engaging in any other transaction involving mailing lists bearing the name of said addressee.

b. That the Court grant to plaintiff such other and further relief as may be just and proper.

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By
Lloyd H. Baker
Assistant U. S. Attorney

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R-BOOKS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - X

NOTICE OF MOTION

72 C 601

PLEASE TAKE NOTICE that upon the annexed certified copy of the record of the proceeding in the Post Office Department, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a term for the hearing of motions to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, Courtroom 8, on the 5th day of October, 1973, at 9:45 o'clock in the ~~fore~~after noon of that day, or as soon thereafter as counsel may be heard, for

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

an order pursuant to Rule 56 granting summary judgment to the plaintiff, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: Brooklyn, New York
September 4, 1973

ROBERT A. MORSE
United States Attorney
Attorney for the United States
of AMERICA

By:

Lloyd H. Baker
Assistant U. S. Attorney

TO:

HERBERT MONTE LEVY, ESQ.
295 MADISON AVENUE
NEW YORK, NEW YORK 10017

1256a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS.

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT

Washington, D.C. 20260

January 27, 19 70

CERTIFICATION

I hereby certify that the annexed documents constitute true copies of original records which are in the official custody of the Post Office Department, to wit: P.O. Docket No. [illegible] Mr. [illegible]

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, on the day and year first above written.

POD SEAL

William F. Lawrence
Assistant General Counsel
Mailability Division

POD Form 2159
Sep. 1969

1257a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

ORDER

in the Matter of Violation of
Prohibitory Order No. 6370
Issued Against

[redacted]

[redacted]

[redacted]

and agents or assigns, pursuant to authority of Title 39, U.S. Code, §4009.

P. O. Docket No. [redacted]

Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned Prohibitory Order.

J Kelly
Postmaster

[redacted]
FOR JOSEPH J. BENUCCI
NEWARK NEW JERSEY 07102
City State ZIP Code

[POSTMARK] NEWARK, N. J. NOV 19 1969 USPO

Dated:

POD Form
May 1968 2154

1258a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

COMPLAINT

In the Matter of Violation of
Prohibitory Order No. 6370
Issued Against

[redacted]

[redacted]

[redacted]

and agents or assigns.

On behalf of:

[redacted]
Complaining Addressee

P. O. Docket No. [redacted]

On the [redacted] day of April, 19 69, you received Prohibitory Order No. 6370, copy of which is attached hereto, issued against you and your agents or assigns under authority of Title 39, U.S. Code, §4009, upon request of the above-named addressee.

Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:

1. By further mailings to the addressees listed in the order. See Exhibit attached hereto.
2. You failed to immediately delete from mailing lists owned or controlled by you or your agents or assigns the names of the addressees listed in the order. See Exhibit attached hereto.
3. You or your agents or assigns have sold, lent, exchanged, or made other transactions involving mailing lists bearing names of addressees listed in the order. See Exhibit attached hereto.
4. Other (specify):

[Strike inapplicable items].

Any response to this Complaint or request for a hearing with respect thereto must be filed, in writing, in the Office of the Regional Counsel, Post Office Department, [redacted] (Address)

[redacted], within fifteen (15) days after receipt of this Complaint. Attached hereto is copy of the Department's Rules of Practice relative to answering this Complaint and requesting a hearing in the matter.

[POSTMARK] JUN 23 1969

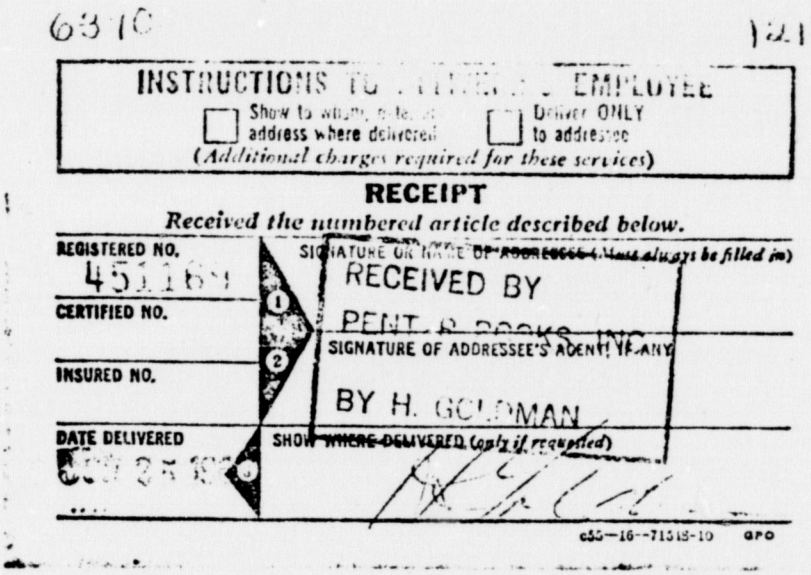
Dated: _____

[redacted]
Postmaster

[redacted]
City State ZIP Code

POD Form 2153
May 1968

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



6310 121

INSTRUCTIONS TO [illegible] EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. 451161

CERTIFIED NO.

INSURED NO.

DATE DELIVERED [illegible]

SIGNATURE OR NAME OF ~~ADDRESSEE~~ (~~Must always be filled in~~)

RECEIVED BY

PENT R BROOKS INC

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

BY H. GOLDMAN

SHOW WHERE DELIVERED (~~only if requested~~)

[signature]

655—16—71518-10 GPO

PENT-R BOOKS INC.
P. O. BOX 81
BROOKLYN, N. Y. 11223

BROOKLYN N. Y.

FIRST CLASS U. S. POSTAGE PAID 6c Permit # 9546

1260a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

L.I. 2525

FIRST CLASS MAIL

3

NJ BELL TEL CO
GEN TRANS ENGRG DEPT
540 BROAD ST
NEWARK NJ 07101

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRATED BROCHURE offering for sale to Adults Only, a new marriage manual. If you do not wish this mail or if you are not over the age of 21 years, DO NOT OPEN THIS ENVELOPE! Simply mark this envelope "REFUSED", sign your

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

ARE SAYING ABOUT THIS BOOK!

"This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.E.

"This is the first marriage manual I've seen that didn't beat around the bush." Mrs. C.R. New York City.

"This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.K., Los Angeles, Calif.

"I wish this book had been published 12 years ago when we were first married." Mr. & Mrs. A.S., New York City.

"I only wish I had seen this book early in my married life. My marriage finally failed for just those reasons which are covered in chapter Seven of this book. If only I had known what this book now makes so clear." Divorcee who was asked to comment.

"We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thanks very much." L.B. & C.K. Chicago, Ill.

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE!

TABLE OF CONTENTS

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We venture to suggest that no three books taken as one, offer the complete coverage of this single volume. The above table of contents but suggests the scope of what is offered. Each chapter is a model of clarity, of down-to-earth language which takes you instantly to the heart of the matter. This book was not written for the professional, although we fully expect that many professionals will insist upon having a copy of this book in a prominent position on their bookshelves.

Those who are considering marriage will want a copy of this book. Those who are married and are just beginning to find a certain tedium in their connubial bed will want to seek here for vital answers to their problem. Those who are ill, old, or handicapped will realize that their sex life need not be the gnawing, frustrating problem it now seems to be.

Perhaps you have feelings which you think are unnatural, even abnormal. Yet your sex nature cries out for fulfillment. Which way shall you turn? What can you do? You can read this book

OUR GUARANTEE

TRY IT . . . DON'T BUY IT . . . With our money back offer!

We, as the publisher, have put a great deal of time, money and effort into this book. We have strong feelings about this book. We feel this book has long been needed in our society of sexual confusion and maladjustment. We feel this book will be of immense value to thousands of men and women. To convince you of our sincerity and of the faith we have in this marvelous book, we make this simple, straightforward guarantee to you. Order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE." Read it. Have your wife read it. If after reading this book, you do not feel powerful in your new knowledge of sex, if you and your partner are not enjoying new heights of sexual excitement and pleasure, simply return the book. Every penny of your purchase price will be immediately refunded. What could be fairer than that? You have nothing to lose but the few moments it takes to fill our and mail the enclosed order form. If sex is an important part of your life, you owe it to yourself and to your sex partner to take advantage of this pioneering book of sexual knowledge. And only once will you have the opportunity to take advantage of this money saving pre-publication special offer. Please act today. A postage paid reply envelope is enclosed for your convenience! And please remember, you are trying, not buying, because if you are dissatisfied for any reason, your money is returned without question or delay! Please order today! Both you and your wife will be glad that you did!

SPECIAL PRE-PUBLICATION OFFER

When it is published, THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE will sell for $12.98, and at that price it will be a fantastic bargain. But now, in a special pre-publication offer, you can purchase this first-of-a-kind book for only $9.98 and save $3 for a limited time only. This special pre-publication offer will not be repeated again. You have one chance and one chance only to take advantage of this tremendous offer.

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE! ONLY $9.98

SPECIAL PRE-PUBLICATION LIMITED TIME OFFER

YOU MUST BE OVER THE AGE OF 21 YEARS TO ORDER. No books will be shipped to unmarried minors.

USE ENCLOSED ORDER FORM AND POSTAGE PAID ENVELOPE

PENT-R BOOKS, INC. P.O. Box 1555
Grand Central Station New York, N.Y. 10017

Gentlemen:

Enclosed please find $ . . . . . .
[ ] Cash [ ] Check [ ] Money Order

Please rush me in plain sealed wrapper_____ copies of "The Photographic Manual Of Sexual Intercourse" at the special pre-publication price of $9.98.

I understand that I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

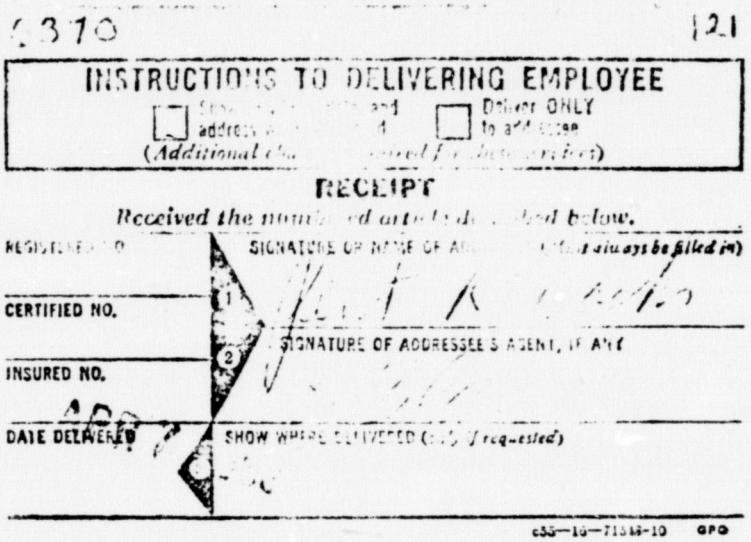
I hereby represent that I am over the age of 21 years and I have signed to that effect below:

Sign . . . . . .
signature

Print Name. . . . . Age. . . . .

Address. . . . . .

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



3310 121

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom and address where delivered (Additional charges required for these services) ☐ Deliver ONLY to addressee

RECEIPT

Received the numbered articles described below.

REGISTERED NO. | SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

CERTIFIED NO. | 1

INSURED NO. | 2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED | SHOW WHERE DELIVERED (Only if requested)

C55—10—71548-10 GPO

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
PROHIBITORY ORDER

In the Matter of

PENT-A BOOKS INC
Mailer

P O BOX 1555

NEW YORK NY 10017
and agents or assigns

PROHIBITORY ORDER

NO. 6370

WHEREAS, we were furnished a mailing piece containing advertising matter which you mailed or caused to be mailed to

R H Coffin & N J Bell Tel Co 52b
(Name of Addressee)

Gen Trans Engrg Dept, 540 Broad St Newark NJ 07101
(Address)

and

WHEREAS, said addressee has determined your advertisement to be a pandering advertisement offering for sale erotically arousing or sexually provocative matter; and

WHEREAS, said addressee has requested the issuance of an order pursuant to the provisions of Title 39, U.S. Code, §4009, a copy of which law is printed on the reverse side hereof, directing you and your agents or assigns, to refrain from making any further mailings to him [and his minor children residing with him who have not attained their nineteenth birthday].

NOW, THEREFORE, pursuant to the cited statute, you, your agents and assigns, are hereby ordered:

(1) To refrain from any further mailings to the following parties at the indicated address, or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder, resident, boxholder, postal patron, rural route boxholder, and local, effective on the 30th calendar day after receipt of this order:

Richard H Coffin

ADDRESS: N J Bell Tel Co Gen Trans Engrg Dept 540 Broad St
(Street)

Newark NJ 07101
(City) *(State)* *(ZIP Code)*

(2) To immediately delete the above-named parties from all mailing lists owned or controlled by you or your agents or assigns.

(3) To immediately abstain from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the parties mentioned above.

[POSTMARK]

NEWARK, N.J. APR 4 1969 USPO

Dated:

Postmaster

By

State ZIP Code

POD Form 2152
May 1968

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

"§4009. Prohibition of pandering advertisements in the mails

"(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postmaster General to refrain from further mailings of such materials to designated addressees thereof.

"(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postmaster General shall issue an order if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

"(c) The order of the Postmaster General shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after receipt of the order. The order of the Postmaster General shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

"(d) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, he shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for his belief and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

"(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punished by the court as contempt thereof.

"(f) Receipt of mail matter thirty days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

"(g) Upon request of any addressee, the order of the Postmaster General shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

"(h) The provisions of subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, United States Code, shall not apply to any provisions of this section.

"(i) For the purposes of this section—

"(1) mail matter, directed to a specific address covered in the order of the Postmaster General, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postmaster General's order, and

"(2) the term 'children' includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship."

(b) The table of contents of chapter 51 of title 39, United States Code, is amended by adding at the end thereof—

"4009. Prohibition of pandering advertisements in the mails."

SEC. 302. The provisions of this title shall become effective on the one hundred and twentieth day after the date of enactment of this Act.

Effective Date: 4-15-68.

1265a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

6370

USE THIS FORM

I, Richard H Coffin, recipient of the enclosed mailing from PENT-R Books Inc
(Print or type your name) (Print name,
Box 1555 Grand Central Sta NY NY
address, city, state, ZIP Code) 10017

consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, § 4009, I request that the above-named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailings to me, [as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday].

Richard H Coffin 18 March
Your Signature Date

RM 1500 540 Broad St
Street

Newark N J 07101
City, State, ZIP Code

LIST CHILDREN AND BIRTHDATES:

_____

_____

_____

_____

COFFIN. R. 6370

PENT-R BOOKS INC.
P.O. Box 1555,
Grand Central Station,
New York, N.Y. 10017

BROOKLYN N. Y.

FIRST CLASS U. S. POSTAGE PAID 6c Permit # 9546

6370

FIRST CLASS MAIL

524

15-00

R H COFFIN
NJ BELL TEL CO
BUS TRANS ENGRG DEPT
540 BROAD ST
NEWARK NJ 07101

542

...ge of 21 years and s... statement to that effect above to order ...

PERSONAL

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRATED BROCHURE offering for sale to Adults Only, a new marriage manual. If you do not wish this mail or if you are not over the age of 21 years, DO NOT OPEN THIS ENVELOPE! Simply mark this envelope "REFUSED", sign your initials and return it to your mailman. Upon the return of this envelope, we will endeavor to remove your name from our mailing list. Thank You.

1266a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

ARE SAYING ABOUT THIS BOOK

"This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.E.

"This is the first marriage manual I've seen that didn't beat around the bush." Mrs. W.R. New York City.

"This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.K., Los Angeles, Calif.

"I wish this book had been published 12 years ago when we were first married." Mr. & Mrs. A.S., New York City.

"I only wish I had seen this book early in my married life. My marriage finally failed for just those reasons which are covered in chapter Seven of this book. If only I had known what this book now makes so clear." Divorcee who was asked to comment.

"We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thanks very much." L.B. & C.K. Chicago, Ill.

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OUR GUARANTEE

TRY IT . . . DON'T BUY IT . . . With our money back offer!

We, as the publisher, have put a great deal of time, money and effort into this book. We have strong feelings about this book. We feel this book has long been needed in our society of sexual confusion and maladjustment. We feel this book will be of immense value to thousands of men and women. To convince you of our sincerity and of the faith we have in this marvelous book, we make this simple, straightforward guarantee to you. Order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE." Read it. Have your wife read it. If after reading this book, you do not feel powerful in your new knowledge of sex, if you and your partner are not enjoying new heights of sexual excitement and pleasure, simply return the book. Every penny of your purchase price will be immediately refunded. What could be fairer than that? You have nothing to lose but the few moments it takes to fill out and mail the enclosed order form. If sex is an important part of your life, you owe it to yourself and to your sex partner to take advantage of this pioneering book of sexual knowledge. And only once will you have the opportunity to take advantage of this money saving pre-publication special offer. Please act today. A postage paid reply envelope is enclosed for your convenience! And please remember, you are trying, not buying, because if you are dissatisfied for any reason, your money is returned without question or delay! Please order today! Both you and your wife will be glad that you did!

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THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE ONLY $9.98

(SPECIAL PRE-PUBLICATION LIMITED OFFER)

YOU MUST BE OVER THE AGE OF 21 YEARS TO ORDER. No books will be shipped to unmarried minors.

USE ENCLOSED ORDER FORM AND POSTAGE PAID ENVELOPE

PENT-R BOOKS, INC. P.O. Box 1555
Grand Central Station New York, N.Y. 10017

Gentlemen:

Enclosed please find $ .....
[ ] Cash [ ] Check [ ] Money Order

Please rush me in plain sealed wrapper _____ copies of "The Photographic Manual Of Sexual Intercourse" at the special pre publication price of $9.98.

I understand that I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

I hereby represent that I am over the age of 21 years and I have signed to that effect below:

..... signature

Print Name. ..... Age. .....

Address. .....

DEFENDANT'S NOTICE OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.
----------x

NOTICE OF CROSS MOTION.

Docket No.
72 C 601

The defendant upon the annexed affidavits, cross-moves the Court as follows:

1. To dismiss the action, without prejudice to restoring it to the calendar upon a further showing of a further alleged violation of the law, under the general principles of equity discretion.

2. To grant summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

3. To vacate the purported prohibitory order issued in this case.

DEFENDANT'S NOTICE OF CROSS-MOTION

4. To grant such other, further and different relief as to the Court may seem just and proper in the premises.

SIGNED:

Herbert Monte Levy

HERBERT MONTE LEVY
Attorney for Defendant
295 Madison Avenue
New York, New York 10017
689-2220

AFFIDAVIT OF HERBERT MONTE LEVY IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant,

----------x

ANSWERING AFFIDAVIT OF HERBERT MONTE LEVY, Esq.

Docket # 72 C 601

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

HERBERT MONTE LEVY, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the attorney for PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment, and in support of our cross-motion for summary judgment. I am personally and fully familiar with all the facts set forth herein.

At the outset, I note that this case is thoroughly moot, and that there is no case or controversy presently pending before this Court; any order entered by this Court

enforcing the prohibitory order (hereinafter sometimes PO) would be a useless order. As shown by the annexed affidavit of RICHARD S. SCHWARTZ, the defendant has taken every precaution humanly possible -- and more so -- using every possible available computer technology, to insure that second mailings are not made to persons in regard to whom PO's have been issued. Indeed, I myself have asked the Justice Department representatives whom I met with on this case on September 25, 1973 in Washington D.C. -- Messrs. Schiffer and Cogbil -- whether they had any suggestions as to how my client might take any better precaution to insure against violations, and they were silent on this score. Nor has the Assistant United States Attorney in charge of this case locally, Lloyd Baker, Esq., ever been able to suggest any additional precautions which my client should take.

Not only has my client taken every precaution to avoid the possibility of a second mailing, but my client's position, as stated in the annexed affidavit of Mr. Schwartz, is that it has no intention whatsoever of violating any PO, that under its existing computer technology it cannot violate the PO even if it wanted to; accordingly, there

is not only no threat of violation of a PO, but no possibility of violation of the PO (barring computer error). Certainly, a computer error could not be the basis for any finding of a contempt, nor could a human error, perhaps by feeding an erroneous entry into the computer, ever be deemed a contempt. Hence, since nothing can be accomplished by any order to be entered, and since there is neither threat nor possibility of an intentional violation of a Court order, there is no ground for equity to issue an injunction. Certainly, in its discretion, no injunction should issue. The case, too, is clearly moot, and we cannot see how there is any case or controversy within the meaning of the United States Constitution, which would give this Court jurisdiction.

Nonetheless, though we note this plea in bar because of lack of jurisdiction, because of lack of case or controversy, mootness, and no threat or intent by the defendant to act illegally, we now turn to other aspects of the matter.

Irrespective of what we have set forth above, and what we set forth below, this case -- along with all the other related cases -- must be dismissed for the failure of the Postmaster General to make the final finding and

order that he is required to make before any jurisdiction can attach in this Court. Thus, Subsection D of Section 4009 provides as follows:

> "If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a District Court of the United States for an order directing compliance with such notice."

Thus, the Postmaster General must determine that the order given -- the prohibitory order -- has been or is being violated. Yet neither the order in this case, nor in any of the companion cases, makes any such determination. In fact, no determination whatsoever was made by the Postmaster General. The order itself, a form order, merely recites as follows:

> "Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned prohibitory order."

The mere claim, or fact, that satisfactory evidence was presented that defendant acted in violation of a prohibitory order, does not constitute a determination that defendant had violated or was violating the prohibitory order.

AFFIDAVIT OF HERBERT MONTE LEVY

Satisfactory evidence could be presented to show a violation, and there could be evidence presented contra as well. Thus, there was simply no determination required by statute, but merely a recital that a prima facie case had been made out.This is totally different from a determination having been made of a violation.

Moreover, even had a determination been made, the statute required such a determination to be made by the Postmaster General. The determination here, such as it was, was made by a Director of Administrative Services . We are aware of no delegation of authority to a Postmaster to make such a determination, and for such a local official to make a request to the Attorney General of the United States. Yet that is apparently what happened here. Moreover, if there were any such purported delegation pursuant to either regulation or rules, we know of no authorization for such delegation, and therefore, the entire proceeding, predicated upon this order, must fall as being without a foundation.

The so-called Pandering Law, 39 U.S.C. Section 4009, gives complete discretion to the complaining addressee to determine whether the advertisement occasioning the Prohibitory Order (hereinafter sometimes "PO") is indeed a pandering advertisement. Of course, many complaining

addressees, whose libido is aroused by non-sexual materials or who are eager to shut off the mailed flow of advertisements, have certified that an advertisement is a pandering one, when to a more reasonable person it might appear that such an advertisement was not pandering, i.e., neither erotically arousing nor sexually provocative. Thus, according to the Report of the Commission on Obscenity and Pornography (Bantam Books Edition, 1970), at p. 133:

> "Prohibitory orders have been issued against nearly 400 separate business firm names mailing sexually oriented materials; orders were also issued against dozens of business firms advertising nonsexual products."

However, according to information we have received, the Government has not sought even one Court order to enforce a postal prohibitory order against any of the dozens of business firms advertising nonsexual products. It has sought Court orders only when the first mailing was -- in the judgment of the Post Office -- pandering, i.e.,of a sexually provocative or erotically arousing type. Thus, for example, I have received information, and therefore allege, that while prohibitory orders have been obtained against mailings made by such organizations as the American Civil

AFFIDAVIT OF HERBERT MONTE LEVY

Liberties Union and the Practicing Law Institute -- neither of which mail any material which could conceivably be called sexually provocative or erotically arousing -- the Post Office and its successor, the Postal Service, have completely failed to go into Court to seek a Court Order enforcing a PO, even when there has been a violation of the PO. We defy the Government to show otherwise.

Thus, the Government has been selectively determining in which cases it should seek a Court order. Since nothing can happen to a mailer unless and until he violates a Court order, it is quite clear that Post Office censorship is now being used in the place and stead of the discretion of the complaining addressee. Thus, the First Amendment is violated, because as construed and applied, and in its operation and effect, the law vests the plaintiff and the Attorney General with the power to make discretionary evaluations of material, and to determine which advertisers to move against, on the basis of the type of material advertised. The underlying statute is repugnant to the First Amendment and deprives defendant of its First Amendment rights, and is further repugnant to the due

AFFIDAVIT OF HERBERT MONTE LEVY

process clause of the Fifth Amendment, and further deprives defendant of liberty and property without the due process of law required by the Fifth Amendment, as well as depriving defendant of the equal protection of the laws under the said Fifth Amendment.

The administrative complaint issued by the Post Office did not state any cause of action, in that it failed to allege the date of the alleged second mailing, and in that it further failed to allege that such alleged mailing was made more than 30 days after the defendant's alleged receipt of the alleged PO.

As construed and applied, and in their force and effect, 39 U. S. C. Section 4009 and the Rules and Regulations promulgated thereto and thereunder, are repugnant to the due process of law clause of the Fifth Amendment and to the Sixth Amendment, and deprive defendant of liberty and property without said due process, and of its right under the Sixth Amendment to a trial by one who is impartial, to be informed of the nature and cause of the accusation, to confront and cross-examine the witnesses against it, and to have compulsory process for obtaining witnesses, the

defendant not being given the "full hearing" afforded him according to the decision of the Supreme Court of the United States in Rowan v. United States Post Office Department, 397 U.S. 728 (1970), for the following reasons:

In every Post Office hearing, the hearing officer--an employee of the Post Office which is bringing the complaint--has been the prosecutor, the judge, the jury, and, to the extent to which he has introduced in evidence varying papers, a witness. Wherever the Post Office has purportedly determined that defendant or someone acting in its behalf has violated a PO, such determination has been made without the testimony of any person whatsoever identifying any materials or the dates of their being received or sent, thus without any legal evidence whatsoever. Despite repeated demand made therefor by the defendant here, no complaining addressee has ever been produced at an administrative hearing, nor has any such person's testimony been permitted to be taken by deposition after due and proper requests therefor, the Post Office disregarding its own rules and regulations in regard thereto, and consistently failing to give any information whatsoever on how its own rules and regulations are being implemented. It is our understanding that the

AFFIDAVIT OF HERBERT MONTE LEVY

Post Office has never even inquired as to the willingness of the complaining addressee to appear and give testimony at a Post Office hearing. Thus, any mere indication by a complaining addressee, or any written (but invariably unsworn) statement by the complaining addressee,as to the date of receipt of the second mailing, has been accepted as uncontrovertable Gospel truth by the Post Office, with no opportunity being given to the defendant to show error or hostility on the part of the complaining witness.

Insofar as the plaintiff may rely upon the presumption of 39 U. S. C. Section 4009(f), such presumption is arbitrary, capricious, unwarranted and unreasonable, especially in view of the notoriously poor mail service of the last several years.

The defendant has been denied its right to a hearing before the Post Office, and, unbelievable as it may sound, the Post Office has in effect taken a default against my client by reason of its own inefficiency, by reason of its own inability to properly transport the mail to itself. The Pandering Law requires that a demand for a hearing be filed with the Postmaster General within 15 days after the PO has been received by the mailer. The Post Office immediately began violating this provision

of the law, by requiring the demand for a hearing to be addressed not to Postmaster General, but to the local Postmaster, or to someone at a local Post Office; this is clear from an examination of the text of the complaint issued by the Post Office. Thus, it was improper for the Post Office to take a default in any situation, since it required a filing with the wrong official.

Nonetheless, at the time that the administrative complaint was issued in this case, I had followed the following procedure:

The latest stamp on the back of the envelope containing the administrative complaint, I reasoned, was the earliest date upon which the PO was delivered to client; certainly, it was a reasonable date to measure from, since obviously the Post Office could not have put a stamp on the back of the envelope after it had parted with its custody. Accordingly, when received from client, it was my practice to make a notation as to the deadline date for mailing in the demand for hearing, based on the latest Post Office stamp. Where a stamp showing date was put on by my client, I measured from this date of receipt. I calculated this date as being 14 days from the latest date stamped

on the back of the envelope, except where the 15th day would fall on a Monday, and I would note my deadline as being the Friday preceeding that Monday. Appropriate adjustments were made if a holiday intervened. I would then make it my business to mail out my demand for a hearing on or prior to that deadline date.

This was my practice for many many months. The Pandering Law's effective date was April 14, 1968. I had no problems whatsoever with my practice until sometime in 1969 when I noticed that, although I was following my prior plan of action, I was suddenly the recipient of defaults all over the place.

Upon inquiring as to why these defaults were being taken, I was orally advised by Post Officials (just who advised me, I do not now remember) that the Post Office had adopted a new construction of the statute, that they had now decided that they were going to take the words of the statute literally, and if the demand for hearing was not actually "filed" by arrival at the particular Postmaster's office on or before the 15th day, this would be considered a default. I protested that even Internal Revenue Service, when it requires that you file a certain

tax return by a certain date, considers you to be on time if your mailing envelope is postmarked on the day set for filing, and that the Post Office was now claiming that it could put me in default by being slow and inefficient in the delivery of mail to itself. My protests were to no avail. Annexed hereto are copies of my correspondence in this regard, which were sent.

I might also perhaps add that I was extremely careful to always have my demand for hearing sent out on the date that the demand for hearing bore; that demand for a hearing was sent out, though it is not reflected in the "certified" file submitted by the Government, on the day indicated on the demand for hearing, (copy annexed) and there was thus absolutely no reason whatsoever why, in equity or logic, the Post Office took a default solely because of its own inefficiency in delivering mail to itself.

In this connection, I note also that in this very case, I took an appeal from the decision denying a hearing as evidenced by the correspondence annexed hereto. So far as my records now show, that appeal was never acted upon. Thus, this proceeding is being brought to enforce a PO while an appeal is still pending in the Post Office Department.

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The above also demonstrates that the file submitted by the Government herein is woefully incomplete.

The Government purports to proceed upon what it terms, in its notice of motion, an annexed certified copy of the record of the proceeding in the Post Office Department. However, the certification which is annexed is totally defective, in several respects, as is set forth in detail in our memorandum of law to be submitted herewith. Thus, no evidence has been presented to the Court upon which it could base an order; the Government's motion must be denied, and summary judgment awarded to defendant.

Further, we note that the certification is remarkably lacking in stating which officer has legal custody of the record. All "certifications" seem to be made by an official in Washington, D.C. Yet this official is not the one who has either actual or legal custody of the record. On the contrary, "Files relating to the issuance of these prohibitory orders (325,000 issued between 4/14/68 and 12/31/69) are maintained in 64 postal service centers across the country and contain the complaints, the offending material, and the resultant

prohibitory order." Vol. III, Technical Report of the Commission on Obscenity and Pornography, p. 161.

Even were a certification here to be proper and legally correct, it would nonetheless not afford a basis upon which any factual findings could be made and an injunction issued, for the certification merely certifies "that the annexed documents constitute true copies of original records which are in the official custody of the Post Office Department, to wit," then reciting the Post Office Docket number of the case and the name of the complaining addressee. Thus, the only papers which are certified by the Government are, at most, the papers which would contain the docket number, and yet, such papers standing alone cannot possibly spell out any violation of a prohibitory order. For until the issuance of the administrative complaint by the Post Office, no papers bear a docket number, nor has the docket number of the case been put on any papers ante-dating the administrative complaint. Therefore, there is no certification of the record insofar as the issuance of the underlying prohibitory order, or the date of its receipt by the defendant. Since the

date of receipt is crucial in determining whether the prohibitory order has been violated, its effective date being 30 days after its receipt, there is, in the absence of any certification of the prohibitory order and the return receipt therefor, a complete lack of any proof of the date of the receipt of the prohibitory order. Thus, the entire case must fall as being without a foundation. Moreover, the paper supposedly containing some proof of the date of receipt of the second mailing does not contain the docket number of the case; thus, it has not been certified. Similarly, the return receipt showing the alleged date of receipt of the administrative complaint does not bear the docket number of the case. Thus, there is simply no proof whatsoever as to the receipt of the administrative complaint. There is nothing to show, accordingly, that the defendant was accorded its procedural rights under the statute.

The Pandering Law, as it existed at the time of the alleged violation complained of here, did not require merely that a prohibitory order be issued as an order of the Post Office, or its present successor the Postal Service, but required that the prohibitory order be issued by the Postmaster General.

In the case at bar, the prohibitory order was not issued by the Postmaster General.

In the case at bar, the prohibitory order was not issued by the Postmaster General. It was not even issued by a local postmaster. It was issued, on the contrary, by the Director of Administrative Services. We are not aware of any delegation to such an officer of the power to issue a prohibitory order, and if there was any such delegation of authority, pursuant to any rule or regulation, we are aware of no statute which would authorize such delegation to the Director of Administrative Services.

The prohibitory order prohibited a mailing to (possibly among others) a person by the name of Richard H. Coffin . However, the second alleged mailing was not to such person, but was addressed to a different name, to wit, R.H. Coffin , a person not named in the prohibitory order as one to whom a mailing was prohibited. Thus, there was clearly no violation of the prohibitory order.

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We turn next to the problem of whether, even assuming that the record is properly certified and that the so called evidence of date of receipt of the second mailing was admissible, -- both assumptions being purely for purposes of argument, -- a violation of the prohibitory order has been made out. We note, at the outset of this facet of the argument, that there is completely lacking any proof whatsoever of the date of the second mailing, that such date was never alleged, and that therefore the defendant was never accorded due process of law under the Fifth Amendment and the right to know the nature and cause of the accusation against it under the Sixth Amendment. Just as significant, however, is the fact that the second mailing bears no postmark whatsoever. Thus, the Government is forced to rely upon the statutory presumption found in Section 4009 (f), that a mailing received more than 30 days after the effective date of prohibitory order is presumed to have been sent in violation of the order. But, as we show in our brief, the effective date of

the order is 30 days after it has been received, so that there is no presumption of a violation unless the second alleged mailing was allegedly received 60 days or more after the date of receipt of the prohibitory order.

In the case at bar, it is quite clear that the presumption does not operate, since, according the Government the benefit of every doubt and assuming for purposes of this argument solely that the evidence is admissible, the most that the Government alleged file shows is that the prohibitory order was received by defendant on April 7, 1969 and that the second alleged mailing was received by the addressee on May 15, 1969 -- being a difference of less than 60 days between such two dates. Thus, the presumption cannot operate, and in the absence of any proof whatsoever other than that to be gained by the use of the presumption, it is quite clear that the Government has not made out a violation of the prohibitory order, and that summary judgment should be granted to the defendant, dismissing the complaint.

We come next to the question of admissibility of the evidence of the alleged date of receipt of the second alleged mailing. In view of the improper certification of the record, we do not see how such proof can be

admissible in any event; it is completely unsworn to, and it is the rankest kind of hearsay. The Government, in its brief, has not attempted to sustain the admissibility of this evidence. We expect, however, that the Government will urge that, assuming proper certification, it is admissible under the Federal Business Records Act (28 U. S. C. Section 1732 (a)) as a record kept in the ordinary course of business, it being the ordinary course of business to keep such records. However, as we show in our brief, since the business involved is that of the Post Office, and the entries as to alleged dates of receipt were made by third persons, not by the Post Office, such rule does not apply. Moreover, even if such a rule did apply, in a normal case, it would not be applicable here, for this reason:

The normal reason for permitting evidence of business records to be admitted is that such records are inherently reliable. But in a prohibitory order-pandering case, we submit, such evidence is inherently unreliable. For several reasons, as follows:

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a) The type of person who goes to the time and trouble of going to the Post Office to obtain a prohibitory order rather than merely tear up the material which offends him, especially when -- as here -- he has been given notice of the contents of the envelope (see the right hand bottom of the mailing envelope), is obviously the type of person who is sorely offended by sexually oriented material, the type of person, indeed, who very well might, usually does, wish to see as much trouble caused to the mailer of such material as possible, even when, as here, the material involved has been held to be not obscene. This is graphically illustrated, despite all the hypocrisy of the Pandering Law, in the statement of one addressee, in the case purportedly pending in this Court of United States v. Pent-R Books,72 C 606, where the addressee noted as follows on the notice (request) for prohibitory order:

> "I request more than this (see below). This form evades the real issue. I have no minor children in my home, but YOU know this literature is reaching homes that have minor children. I AM NOT CONTENT WITH MERELY STOPPING THIS TYPE OF PORNOGRAPHIC MAIL FROM REACHING MY HOME; I EXPECT THE POST OFFICE AND JUSTICE DEPTS. TO FLUSH OUT THE SOURCE OF THIS OBSCENE MAIL, GET HIM OR THEM IN PRISON, AND STOP ANY OF THIS STUFF FROM BEING MAILED OUT AT ALL."

Similarly, in another purportedly pending case, in the memorandum from the Post Office Dept. dated June 3, 1969, the Postmaster recites that the complaining addressee, Mr. Griffis,

> "...is very concerned about this type of literature in the mails and offers his assistance and cooperation in trying to rid the mails of it."

And this is very obviously the attitude of the Post Office.

b) There may be community pressure, pressure by Post Office officials, or even by the local Postmaster or postman to attempt to make out a violation of a prohibitory order in order to cause more trouble for the mailer, in this emotionally-charged situation. The defendant is precluded from obtaining an examination of the complaining addressee in order to determine this, and there is simply no way in which the defendant can ever obtain such information. But this has happened. Graphic and dramatic

proof of this -- of a direct Post Office attempt to influence an addressee to set forth a false date of receipt of mail so as to be able to find a violation of a prohibitory order, -- was accidentally uncovered during a hearing in another case involving this very defendant.

Thus, in the Post Office case entitled "In the Matter of: Violation of Prohibitory Order No. 633, issued against Pent-R Books, Inc., Respondent, on behalf of Thelma M. Moser, Complaining Addressee, by Postmaster, Phoenix, Arizona," Post Office Docket # R14-Pa64-633, Gary Langer, Esq., then of my office, at the Post Office hearing, asked to look at the original folder. Upon it being examined, Mr. Langer noted that in the file, there was a card, obviously prepared by the Post Office, the bottom of which purported to show the date of receipt reading:

> "On August 27, 1969, I, Thelma Moser, received from the Pent R Book (sic) a second letter",

apparently signed by Thelma Moser. But immediately preceding this legend, also obviously prepared by the Post Office -- which had failed, however, to cut it off -- appeared the following:

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> "In order to make a case against this firm we must have signed statement as to date of delivery of the second letter. The date given is an estimated date, but will give us the correct waiting period to carry on this complaint. An envelope is supplied for your convenience and no postage is necessary."

A Xerox copy of the card is being filed with this Court in United States v. Pent-R Books, Inc., 69 C 1362.

That this came from the Post Office is quite clear -- no one else would or could have given this "information" and supplied a postage-free envelope. The Post Office's clear motive was "to make a case against this firm (defendant)", and the date given was an estimated date, obviously "estimated" by the Post Office in order to give them "the correct waiting period to carry on this complaint." Thus, the alleged date of receipt of the second mailing in that case was a totally fictitious date that the Post Office itself "estimated" in order to show a violation. (How could the Post Office make an estimation of that which was not within its own knowledge?) It will be noted that the alleged date of receipt, August 27, 1969, was completely typed in on the same typewriter which had written the instructions, and was obviously not done by Thelma Moser. Filed in 69 C 1362 will be a photocopy of the transcript of the stenographic minutes of the Post Office hearing on this matter.

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In the complete absence of any opportunity to cross examine Thelma Moser, or the Postal officials involved -- an opportunity constantly requested by us, but always denied in each and every case, -- the defendant is simply at the mercy of the Post Office, when the Post Office thus unilaterally decrees the alleged date of receipt of the second mailing, to get a correct waiting period to carry on its complaint. The Post Office obviously picks a date convenient to show, in their legal judgment, a violation. How widespread this practice has been by the Post Office, it is impossible to determine. (We should also note that the Post Office has consistently taken the position that receipt of a second mailing more than 30 days after receipt of the prohibitory order presumptively establishes a violation; though this position is incorrect, it explains why the Post Office does not always suggest a date of receipt of the second mailing more than 60 days later.)

Of course, this shows that when the Government seeks equity here, it does not come into Court with clean hands. Its hands are despicably defiled by its covert attempt to frame the defendant in the Moser case, an attempt disclosed only through its carelessness in not cutting off

the top of the card in this instance. While this is not one of the cases presently pending in which summary judgment is sought, the simple fact is that there is no investigatory tool whatsoever by which we can ascertain how widespread this practice is and was. Denied the right to confront and examine a complaining addressee, which we contend is a denial of liberty and property under the due process clause of the Fifth Amendment and the denial of the right to cross examine and confront defendant's accusers under the Sixth Amendment, but with the proof of at least one attempted frame-up, we submit that the Government must either submit all of its complaining addressees and Postal Officials to confrontation and cross examination, or that equitable relief should be denied by the Court.

In my affidavit, I note that the Post Office hearing examiner sits as the witness, judge, and jury. An examination of the transcript of the minutes in the Moser case shows the vice of such multiple roles being combined in one person. The hearing officer was David S. Kelson, Esq., an attorney for whom I have the greatest respect and admiration. Yet even Mr. Kelson, when faced with indubitable proof of the Post Office framing a

defendant, rose to the defense of his employer, the Post Office. It is, under the circumstances, a severe denial of due process to permit the same person to be witness, judge and jury, especially when he is employed, as here, by the same Department which makes the accusation of violation.

Thus, whatever exception there might be based upon inherent reliability of business entry records is totally lacking in this case. In this day of revelation after revelation of improper conduct on the part of highest Government officials, and with at least one Postmaster having been found out to attempt to obtain false statements as to date of receipts of second mailings, it would simply ludicrous to hold that there was any inherent reliability in the alleged statement by an addressee of the date of receipt of the second mailing.

The proof of date of receipt of the second alleged mailing merely purports to show the date upon which it was received -- but in no way, shape or form does it set forth by whom it was received on such date. It could mean received by the Post Office, it could mean received by anyone, and there is simply no signature to even vouch for such a date of receipt -- even by the Post Office.

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While the law as quoted in the Government brief now permits a complaint to be issued by the Postal Service, it is nonetheless true that the statute as it existed at the time of the issuance of the complaint in the case at bar required that the complaint be issued by the Postmaster General. So, too, with the order determining the violation. But in the case at bar, the Postmaster General did not issue the administrative order finding the violation, or any administrative order.

On the contrary, neither the complaint nor the order were issued even by a local Postmaster, but were issued by the Director of Administrative Services.

There has been neither showing nor claim that there was any statutory authority -- palpably lacking -- for the delegation by the Postmaster General to such person, an authority which would seem to be singularly lacking, in view of the fact that recommendation has been made to the Attorney General to seek a Court order upon the say-so not of the Postmaster General, a Cabinet officer, but on the say-so of a minor functionary. If there be such a delegation of authority, we are unaware of it, and further unaware of any statutory or other basis for such delegation.

AFFIDAVIT OF HERBERT MONTE LEVY

This affidavit has been particularly directed towards the particular facts in this case. We also submit herewith an affidavit by Richard S. Schwartz, which will be filed in every one of the presently pending Pent-R cases, which attacks the proposed relief requested by the Government on numerous other grounds, common to all of the cases pending in this Court, against this defendant.

For the reasons stated in this affidavit, as well as for the reasons set forth in Mr. Schwartz' more generic affidavit, we submit that the Government's motion for summary judgment should be in all respects denied, and that our cross motion for summary judgment should be in all respects granted.

Sworn to before me this
6th day of November, 1973

HERBERT MONTE LEVY

GILSOM SAFDEYE
Notary Public, State of New York
No. 3425478
Qualified in Kings County
Commission Expires March 30, 19 75

1299a

EXHIBIT, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY.

September 8, 1969

William Lawrence, Esq.,
Assistant General Counsel
Mailability Division
Post Office Department
Washington, D.C.

Dear Mr. Lawrence:

Re:	Pent-R Books, Inc. ads.	P.O.	(Matheny)	No.	R5-P-292
	" " " "	P.O.	(Stasiak)	No.	R5-P-291
	" " " "	P.O.	(Coffin)	No.	NK-69-6370-121
	" " " "	P.O.	(Costa)	No.	NK-69-6766-133
	" " " "	P.O.	(Ferguson)	No.	PH-69-5342-77
	" " " "	P.O.	(McElravy)	No.	BosP 69-35

Again I must appeal to you from the Orders and/or Hearing Denials in the above matters, all of which were received by me last week, asking that you consider this as a notice of appeal and a brief in support thereof, and incorporating by reference the arguments previously made in my varying letters to you.

I am particularly concerned about the first two matters indicated above, wherein the demand for hearing was mailed eight (8) days after we received the complaint, and, moreover, the Order deciding that the Prohibitory Order had been violated was dated one day prior to the date that the complaint was received.

May we have a prompt ruling on all these matters, and also your advice as to whether I should send copies of demands for hearings to you and/or the Postmaster General in order to expedite matters. My files are, indeed, getting rather clogged with all these matters.

Sincerely,

Herbert Monte Levy

HML/mo

1300a

DEMAND FOR HEARING, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY.

DEMAND FOR HEARING, ETC.

TO: Postmaster
Mr. J. J. Benucci
Newark, New Jersey 07102

FROM: Herbert Monte Levy, Esq.
295 Madison Avenue
New York, New York 10017

RE: **Pent-R-Books, Inc.**
ads. P.O. (**Coffin**)
P.O. Docket No. **NK-69-6370-121**

DATED: **July 8, 1969**

Client has received the Complaint in the above matter, dated **June 23, 1969** . We hereby demand a hearing, and further request pursuant to Rule 956.10, that this matter be consolidated with the many other Complaints involving client pending across the country, involving the same or similar mailings, and removed to New York for hearing. Our demand for change of place of the hearing is made pursuant to Rule 956.6, not only to satisfy jurisdictional requirements, but to avoid questions of unconstitutionality. Moreover, it is our understanding that your practice is to present no witnesses whatsoever at the hearing though we will have numerous witnesses including varying personnel of client, to testify as to precautions taken and precautions possible to prevent violations of the Prohibitory Order, and whether, if there was a violation, the violation was intentional, inadvertent or preventable. We further intend to have one or more witnesses from this area to testify as to the arbitrary and unreasonable nature of the underlying statute, and hence its unconstitutionality both on its face and as applied to this case, based upon their expertise in the mail order business. For a further explanation of our claims in this matter, we enclose herewith a copy of an Answer filed in a pending case (prepared by undersigned) entitled United States v. Book Bargains. [If such a copy is not enclosed herein, we note that a copy thereof was previously furnished to you in **Book Bargains, Inc.** ads. P.O. (**Wilber**), P.O. Docket No. **NK-68-2685-30**] We hereby incorporate by reference all points made in the said Answer and make the same defenses and objections as are made therein.

DEMAND FOR HEARING, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

We demand that the complaining addressee appear to testify and be cross-examined, or, in the alternative, that the Complaint be dismissed. Kindly advise us if the complaining addressee will appear, simultaneously with or before we receive the Notice of Hearing, so that we may determine within five days of the receipt thereof whether to take testimony of the complaining addressee by deposition. Denial of the right to confront and cross-examine would be in violation of client's Sixth Amendment rights.

In order to assist our determination as to whether to take deposition, kindly advise as to who the "Deposition Officer" will be under Rule 956.8, his fees, and the authority for Post Office contention as to payment of fees and expenses to witnesses, and the amount thereof, since we have been unable to find any law requiring such payment. We further request and demand that the deposition be taken in New York City. We further demand to be advised whether the addressee was or is a Post Office Inspector, working for the Post Office, affiliated with it, or influenced by it.

In order to assist in the coordination of the numerous cases pending across the country re client involving the same or similar mailings, we are sending copies of this letter to the Assistant General Counsel of the Mailability Division of the United States Post Office in Washington, as well as to the Postmaster General.

We hereby demand dismissal of the Complaint for the following reason(s):

1. The underlying legislation authorizes Prohibitory Orders and Complaints to be issued by the Postmaster General. The order and complaint here were not issued by the Postmaster General. There has been no delegation of authority by the Postmaster General, and any such delegation would be in contradiction of the statute. We accordingly take the position that the Prohibitory Order and Complaint here (is) (are) (a nullity) (nullities). If either the Order or the Complaint were issued by someone other than the local Postmaster, our contention applies <u>a fortiorari.</u>

DEMAND FOR HEARING, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

2. The Complaint fails to allege or show the date of the alleged second mailing. Since a second mailing would violate the Prohibitory Order only if sent more than 30 days after the effective date of the Prohibitory Order, the Complaint fails to state a cause of action. Moreover, failure to advise of the alleged date of the alleged second mailing denies client's Sixth Amendment right to know the nature and cause of the accusation against it, and deprives it of liberty and property without due process in violation of the Fifth Amendment.

3. **Nothing is annexed to the Complaint except the Prohibitory Order. Accordingly, we must demand copies of the mailings so that we may determine whether the Prohibitory Order was or was not violated. Failure to furnish us with such materials immediately would be a violation of the constitutional provisions referred to in Paragraph 2 of this page.**

HERBERT MONTE LEVY, ESQ.

AFFIDAVIT OF RICHARD S. SCHWARTZ IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.

Defendant.
----------x

ANSWERING AFFIDAVIT OF RICHARD S. SCHWARTZ.

Docket #

72 C 601

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

RICHARD S. SCHWARTZ, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the Secretary of defendant PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. as well as of RAS ENTERPRISES, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment herein, and in support of defendant's cross-motion for summary judgment. I am fully and personally familiar with all the facts set forth herein.

AFFIDAVIT OF RICHARD S. SCHWARTZ

EXTRAORDINARY PRECAUTIONS TAKEN BY DEFENDANT TO AVOID OFFENDING RECIPIENTS OF ITS MAIL.

Upon the outside of all mailing envelopes sent by defendant, or upon the outside of an inner sealed envelope, there had always appeared a notice advising the recipient of the nature and content of the advertisement contained therein.* If the recipient did not want this material, he merely marked the envelope "Refused", as invited to by defendant, initialed it, and returned it to the postman or dropped it into a mail box which he was sure to pass sometime during the day, all at defendant's expense, after which defendant removed the addressee's name from its mailing list.

Defendant had thus avoided the necessity of an addressee viewing materials which he preferred not to be exposed to, unlike the requirements of the Pandering Law where, if the complaining addressee is to be at all honest, he must open and view the materials. We had also avoided the time

* This practice ceased in 1970, when the Goldwater Amendment to the Postal Reorganization Act of 1970 required the legend "Sexually Oriented Ad" to appear on the envelope or on an inner sealed envelope. Defendant then followed that law. See Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp.297 (E.D. N.Y. 1971).

consuming necessities inherent in the addressee obtaining the Prohibitory Order and following through for a complaint. We emphasize that defendant had always done this -- starting long before the effective date of the Pandering Law.

Defendant has thus always been extremely careful of the sensibilities of persons who might otherwise be offended. Incidentally, lest the Court think that the more than 200,000 prohibitory orders that have been received by the defendant seem excessive, we note that defendant has mailed perhaps more than 10,000,000 advertising pieces, and thus the percentage of prohibitory orders received by it from all its mailings is some 2%. And though some 200,000 people purportedly objected to our ads, more than 450,000 copies of the book advertised have been sold. We further note that the advertisements, involved herein, for"The Photographic Manual of Sexual Intercourse", have been ruled non-obscene and constitutionally protected by Judge Masterson of the U. S. District Court for the Eastern District of Pennsylvania, United States v. Stewart, unreported, Crim. No. 69-162, Order dated October 13, 1971. Under these circumstances,

we note that if 39 U.S.C. §4009 or its successor be applied to the defendant, who is shown here to be engaged solely in publishing, selling and distributing materials protected by the First Amendment, with a warning notice described above, such application is unreasonable, arbitrary and capricious, repugnant to the due process of law clause of the Fifth Amendment and to the First Amendment, and deprives defendant of liberty and property without due process of law and constitutes an unreasonable, capricious and arbitrary restraint on First Amendment rights, especially in view of the severe limitations on First Amendment rights necessarily encompassed in any attempt to avoid a conflict with 39 U.S.C. §4009 -- as we shall show below. For the price of compliance with §4009, as we note below, is that many mailings cannot be made to persons who wish to receive such mailings, and therefore the statute prevents mailings to persons who desire to receive them, thus interfering with their -- and defendant's -- First Amendment rights -- a possibility never considered by the Supreme Court of the United States in Rowan, a case which

was instituted in the early days of the Pandering Law, without any opportunity whatsoever for the Supreme Court of the United States to have any but the sketchiest information on how the law worked out in practice.

SINCE THE DEFENDANT HAS NEVER WILLFULLY VIOLATED A PROHIBITORY ORDER, AND SINCE THE DEFENDANT HAS TAKEN ALL POSSIBLE PRECAUTIONS TO AVOID SECOND MAILINGS, INCLUDING DEPRIVING PERSONS WHO WISH TO RECEIVE ITS ADVERTISEMENTS OF THE RIGHT TO DO SO, AND SINCE DEFENDANT NOT ONLY DOES NOT THREATEN TO MAKE AN ADDITIONAL MAILING BUT HAS MADE IT VIRTUALLY HUMANLY IMPOSSIBLE TO DO SO, AN ORDER SHOULD NOT ISSUE ENFORCING THE PROHIBITORY ORDER.

The so-called Pandering Law went into effect on April 14, 1968. At that time, no one knew for certain what its operation and effect would be. But after more than 5 years of experience with this law, the defendant knows, and shall hereinafter demonstrate to this Court, that this law cannot be complied with except by disregard of defendant's own First Amendment rights -- which defendant has had to disregard in order not to be in conflict with the law. We thus claim that the law, so construed and applied, in its operation and effect, does violate the First Amendment.

AFFIDAVIT OF RICHARD S. SCHWARTZ

At no point whatsoever did defendant ever willfully make a second mailing in violation of a prohibitory order; at the present time, and for at least the last three years, because of the computerization that the defendant has used, we submit that not only does defendant have no intent of violating the prohibitory order here, but it could not do so even if it wished. It is our contention that in the complete absence of any willfulness in the second alleged mailing, plus the fact that there cannot be a willful mailing hereafter, an order of this Court should not issue.

As we shall show in some detail at length below, there is no doubt of defendant's good faith and diligence in attempting to comply with the Pandering Law. The cases involved here all deal with second alleged mailings in 1969, in which year Pent-R made about 10,000,000 mailings. But long prior to the 1968 effective date of the Pandering Law, we had set up a computerized system, solely in order to be able to completely comply with the terms of the law. That system was set up by the President of defendant, Ronald A. Stewart,

with my assistance, through arrangements made with a computer house and a system was devised as shall be set forth below. The cost of running that computer operation in the year 1969 was some $62,068. We are advised by the computer house, that it now estimates that it used the services of the equivalent of 25 people working full time for 6 months -- which it computes as the equivalent of one person working 3000 days, or 24,000 man hours -- in order to set up and process the system. As we note at length below, difficulties were encountered because of the use of rented lists, and rented lists were finally abandoned unless they were on computer tape, where the computer could prevent second mailings. The computer operation became more and more refined as we had more experience with it. The use of duplicate mailing labels was eliminated in 1970, when it was found that this resulted in violations of prohibitory orders. The system itself was finally programmed in 1971, and is still carefully programmed, to guard against second mailings to such an extent that the computer eliminates even mailings

that have not been prohibited. Thus, as we learned of mistakes which took place, we corrected them at once, and took vigorous steps to prevent recurrence of these mistakes or further mistakes in the future. The new system of control greatly improved the situation. It is and has been as nearly perfect as a system can be.

Even originally, as we first set up the computer programming, we had a great rate of success with it. Thus, although we received something more than 200,000 prohibitory orders, the complaints of violation which have so far been upheld by the Post Office -- which bends over backwards to be fair to itself, -- number only approximately 500. Thus, even giving the Post Office the benefit of every doubt, even now the Government charges that only some one quarter of one percent (0.025%) of the prohibitory orders issued to Pent-R were violated. Moreover, every time we have received a complaint from the Post Office, we have once more fed the name and address of the complaining addressee into the computer, so that no further mailings would be made to such complaining

addressees. We have fed these names and addresses into the computer for a third time upon receipt of a Complaint filed in this Court.

Even if an injunction were issued in this case, it would and could have no effect by way of insuring better compliance in the future. With all the efforts we have made, it would be unjust to us to do so, in view of our good faith, and not in the public interest.

Actually, our success ratio is even better than the figure of 1/4 of 1% violations -- or 99 3/4% compliance. Thus, we note the following: All mailings for defendant were handled by another corporation, RAS Enterprises, Inc., of which Mr. Stewart is again the President and I am again the Secretary, as here. The mailings made by RAS Enterprises, Inc. are almost all of a nature that some would undoubtedly find erotically arousing or sexually provocative, so that the mailings of virtually every other corporation which had been processed by RAS have resulted in prohibitory orders. However, though

we estimate that Pent-R, plus all the other corporations serviced by RAS (including RAS itself) have probably had approximately 248,500 prohibitory orders issued against them, there were only seven administrative complaints of violation issued in the first half of 1972, none in the second half of 1972, nor in the first 6 months of 1973. Since then, there have only been three administrative complaints, all issued against an affiliated division of RAS, Companion Products; no material whatsoever was furnished in regard to one of the complaints, so we are at a loss to know whether or not it was justified; in the two cases where some materials were annexed to the complaint, it is perfectly clear that the prohibitory order was not violated. Thus, though there are approximately some 248,500 prohibitory orders issued and outstanding against all such corporations, there have been only some 10 administrative complaints of violation between January 1, 1972 and date -- an alleged violation

rate of less than 0.004%*. Our computer house has estimated the expected rate of computer error to be 1/2 of 1%, so that it is plain that, by falling below this rate of error, defendand (and its computer house) have done a superlative job. There is simply nothing else that we can do, of which we are aware, to avoid offending against the statute. Our good faith effort to comply with the law is perfectly clear. I now detail the course of our computer campaign.

Of course, before the Pandering Law became effective in 1968, defendant had tooled up in order to be able to comply with it. It immediately, upon receiving its first prohibitory order, began to comply with the law, in the following way.

After a prohibitory order was obtained in the Post Office, it was opened by defendant, and dated with the date of receipt (subject, of course, to error -- a lot of them in the beginning, where we failed to put on the date of receipt).

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* This rate assumes that all ten administrative complaints were valid. Since we know that at least two of them were invalid, we have at most eight valid complaints,(only one of which was received after July 1, 1972); assuming the eight are all valid, the violation rate since January 1, 1972 is cut from 0.004% to 0.003%.

A photocopy of each prohibitory order was made, which was sent to the computer house, or "Listing House", while defendant retained the original for its files. At the computer house, the names and addresses of persons to whom mailings should not be made, as they appeared in the ordering part of the prohibitory orders, were typed. These were then read by a device known as an optical scanner, whose function it is to translate the written material into electrical impulses which are put, and then stored upon, a magnetic tape, in a symbolic form. The Pent-R mailing list was put up on a tape itself. When a name appearing on a prohibitory order also appeared on a tape for the Pent-R mailing list, the matching of the two tapes would prevent that person's name from being printed out by the computer on the mailing list which the computer prints out. At the same time, these were sorted out by zip codes.

Two problems became apparent. The first problem was with rented lists. The mailing lists, owned by, sold to and rented to defendant were and are lists of names and addresses of intellectual, mature adults who had previously received

from others, similarly situated to the defendant, advertising or other materials similar to those disseminated by defendant. They were and are mailing lists of names of persons such as doctors, dentists, attorneys, accountants, druggists and other professional people, and owners or proprietors of various businesses thus assuring as much as possible that none of the addressees were or are minors. Because of their nature, many of such mailing lists owned by defendant, and those rented or purchased from others by defendant and others, overlap, and the names of the same persons frequently appear on both such lists.

In view of the many prohibitory orders received by the defendant, it was physically impossible to visually compare, by human vision, the names of addressees thereon with the names in any lists rented by the defendant, especially since the names on rented lists were usually listed in random rather than in alphabetical order. Since the use of an optical scanner and computer to eliminate names on a list involves the copying of the names (by their translation into symbols

stored on the magnetic tape), and since the owner of the rented list will not permit that list to be copied, the defendant found that it was impossible, simply impossible, for it -- or others -- to comply with a prohibitory order insofar as the use of a rented list is concerned.

Moreover, many mailing lists were not available for purchase, being available for rental only, no matter what the price. When a list is sold, the price is many times the rental charges. The operation and the effect of the statute has been that, after defendant learned that it could not comply with the law and also use a rented mailing list, the defendant was forced to abandon the use of most rental mailing lists. It could only use a rented mailing list if and when the owner of such list had himself put the list on magnetic tape, so that the computer could be used to check off the names of persons as to whom prohibitory orders were issued and outstanding. Thus, the defendant has been forced into the position where it can mail to persons on mailing lists, which are available for rental, only if and when such lists are on tape. The defendant has followed this practice since 1970.

Defendant estimates that, because of this limitation, it and the corporation which processes its mailings, and which now owns its mailing lists -- RAS ENTERPRISES, INC. -- have been deprived of the right to mail to somewheres between 5,000,000 and 10,000,000 persons. Even allowing for a 20% of overlap of names on mailing lists already used with those on such rented mailing lists, the operation and effect of the statute has been to prevent mailings for First Amendment materials to approximately 8,000,000 persons within the United States within the last three years.

Further, in this connection, we note that on occasion, the rented mailing lists would not be delivered to the defendant or its computer house, but the owner thereof would insist upon having names and addresses on such list printed or typed by itself or others and sent to separately owned letter shops or mailers where the material to be mailed is inserted in the envelopes, or is otherwise packaged, and mailed. We have included in our estimate above such mailing lists which also are obviously unavailable to the defendant, because of its effort to comply with the Pandering Law.

AFFIDAVIT OF RICHARD S. SCHWARTZ

We submit that the Pandering Law was not intended to apply to a second mailing made to a name on a list rented by the sender. If it was intended to so apply, then defendant, who had exercised the greatest care, would be deprived of liberty and property without the due process required by the Fifth Amendment, since the only way to avoid second mailings to a name on a rented list is by so limiting the use of rented lists as set forth above, and thus effectively restricting the freedom of speech and press of the defendant herein.

There was a second problem which became apparent. In order to print out an entire protester-free list, the list would have had to be printed out anew at least once every 30 days. This particular aspect of the matter itself would have cost at least a minimum of $18,000 per year. To circumvent this cost, three carbon copies of each print-out were acquired at the comparatively nominal costs of $2.00 per 1,000 names. If the mailing label on the second alleged mailing is identical to that on the first alleged mailing, this occurred

because the mailing was made due to the second mailing having been made before a new protester-free list could be printed out, it being impossible and illogical to coordinate dates of mailing with the effective dates of prohibitory orders.

Accordingly, in order to comply with this unconstitutional provision of the law, the use of carbon copies of mailing labels was abandoned by defendant in 1970.* Thus, the law unreasonably and substantially illegally prohibited the use of the mails for First Amendment purposes.

A third problem which was run into was that the optical scanner cannot exercise any judgment. Thus, if the name appearing on the prohibitory order was R. A. Jones, but the mailing list contained the name of Richard A. Jones, the computer would simply not recognize the name.

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*Such use has recently been resumed, but only to the limited extent that carbon copies are made of names and addresses only of those who have bought from us, as to whom the Pandering Law does not apply, Cf. Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp. 297 (E.D.N.Y. 1971). And in any event we have finally worked out a method for their use anyhow, so as to still comply with prohibitory orders.

To avoid this problem, and similar problems, the only way to prevent second mailings was to so program the computer that all persons with the same last name at the same address should not get mail. This was done in 1970.

Of course, the slightest variation of an address would have rendered this an illusory protection; thus, if our attorney's wife Marilyn W. Levy, Esq., who at about that time had an address of 1133 Sixth Avenue, had appeared on a different mailing label as having an address of 1133 Avenue of the Americas, New York City -- the same actual address, but different to a computer -- a mailing to her could not have been prevented.

In the meanwhile, the Supreme Court of the United States had upheld the constitutionality of the Pandering Law though, as we noted, without any knowledge of the operation and effect of the law. The defendant, even though it had pioneered the way in presenting a method by which an unwilling recipient could get its name removed from its mailing list without any expense and minimal effort, had to even further circusmcribe its own First Amendment rights in order to even better comply with the law.

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To even better comply with the law, an improvement was made on or about November 14, 1970. Under this new system, the computer sought out the first five letters of the last name of the addressee, and automatically removed from the mailing list the name of any person at the same address who has the same first five letters in his last name -- even if such other persons had requested mailings from the sender, and even if their first names were different and were in fact different people. Thus, if one Murray Schwartz at 295 Madison Avenue, New York City, had obtained a prohibitory order, the computer would have automatically prevented mailings to all persons at that address the first five letter of whose last name are SCHWA. Thus, in order to comply with the law, mailings to Irving H. Schwartz and Herman Schwartzman as well as to Schwartz, Schindler & Levy, all existing persons or firms at that address, would have been prevented.

Thereafter a still further improvement was made, effective in the Spring of 1971. This eliminated from the RAS mailing lists the names of all persons as to whom the

following three factors also appeared in the Government list supplied under the Goldwater Amendment or in the names supplied by the Prohibitory Order:

A. The first five letters of the last name coincide.

B. The first three digits of the street address coincide, and

C. The zip codes coincide.

Thus, in addition to weeding out the names and addresses of the persons mentioned above, all persons within the zip code area (10017) whose last names began with SCHWA at any address in that zip code area which began with 295, would be eliminated from the RAS list. Thus, any Schwartz, Schwartzman, Schwartzberg, Schwarz, etc. at 295 East 42nd or 295 East 41st, etc., etc., would not receive mail, even though some of such persons might be customers.* The problem is also

* Our computer house has advised us that at Co-Op City, a gigantic housing development in New York City which our computer house programmed, there were last names duplicated in 35-40% of the cases. We note that should a Schwartz in Co-Op City obtain a prohibitory order, many hundred (possibly several hundred) other Schwartz's in Co-Op City could not get a mailing from us -- and that this would continue perpetually even after the one objecting Schwartz moved out.

solved of preventing a mailing to say,1133 Avenue of the Americas, when the address we were given was 1133 Sixth Avenue, since the numbers of the street address control. We have thus succeeded in avoiding the type of problem set forth in the annexed page from "Popular Photography."

Of course, there is still opportunity for error. A mistake may be made by the typist who types up the material for the optical scanner, in putting down the name and/or address; a mere speck of dust on a computer tape may prevent the elimination of one or many names. It is estimated that there will be a computer error factor of one half of one percent (0.5%) which cannot be eliminated. (The Government, indeed, has made many errors in the tapes it supplied RAS under the Goldwater Amendment).

I should perhaps also add that when we receive a complaint of a violation of a prohibitory order, we once again feed the name and address of the addressee into the computer, even though in almost all probability it is already on our tapes, and though the second mailing was due to matters

beyond our control (e.g., the second mailing was to a new address when the Postal Service had only ordered cessation of mailing to an old address).

That our program seems to be working is evident from the fact that in November, 1971, only four complaints were issued -- one of which seems to be explainable only by computer error, two of which were caused by Post Office error, and one of which cannot be explained because we have not been furnished with sufficient documentation, according to advice from Herbert Monte Levy, Esq., our attorney. In October, 1971, only one complaint was received. So, too in September, 1971.

Thus, all of the corporations having their mail processed by RAS Enterprises, Inc. including that of Pent-R Books, Inc., in order to comply with the law, have taken precautions which result in elimination of mailings even to persons who may desire such mailings. We would estimate

that that would include some 50,000 persons.* Under such circumstances, in addition to the clear violation of its First Amendment rights, it is further clear that there would not or could not be any willful violation of a prohibitory order. Accordingly, it would seem that this case would be moot, because any judgment, when rendered, could not have any practical legal effect upon the then existing controversy. Indeed, there is simply no controversy here.

To further note the good faith of defendant, we note that, as already stated, Pent-R did attempt to comply with all prohibitory orders, constantly tightening its preventative measures designed to insure that mail would not reach those who did not want to receive its mail. Moreover, when the Goldwater Amendment came into operation, requiring that publishers disseminating sexually oriented advertisements must subscribe to a list of persons who did not want to receive such ads, defendant was the first -- and for a long time the

* This does not take into account persons in the Armed Forces who may be deprived of mailings, it would seem that one person named "Smith" or "Jones", by obtaining a prohibitory order, would effectively preclude all persons with such a respective last name at such APO address from receiving any mail from us. We have no idea how many persons have the same APO address; we are thus unable to come up with a figure for this problem.

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only -- subscriber to that list, which subscription cost it $10,000 a year.* While continuing to comply with that requirement, Pent-R tested the statute before a three Judge Federal Court; during the course of those proceedings, the Government constantly modified its regulations, under the Goldwater Amendment so that that case was rendered moot and dismissed. One of the modifications followed Pent-R's practice, begun long before the statute was enacted or became effective, of giving a warning notice of the type of contents on an inner sealed mailing envelope. Pent-R Books, et al v. U. S. Postal Service, 328 F.Supp. 297 (1971). To further put this matter

*In analyzing the first such list supplied by the Government, we ascertained that 621 names on that list of 31,604 names had bought sexually oriented materials from one of the plaintiffs there on one, two, three or four occassions previously. Thus, some 2% of those on the Government list are prior buyers. Since the Government list includes names of children, if we assume 2.5 children per adult name, then some 5% on that list were prior buyers from plaintiffs there. We cannot even estimate how many on that list were prior buyers from other sources of supply. This further demonstrates Mr. Levy's thesis that persons are pressured into acting to avoid the receipt of ads for sexually oriented materials.

in context, we note that although some 200,000 prohibitory orders were issued against Pent-R, only approximately 750 complaints were ever made under the Pandering Law, according to the estimate of our attorney and the informal estimates of Postal Service officials -- an alleged violation rate of 0.375% at most. Of the some 750 cases in which hearings were held, approximately 1/3 of these resulted in dismissal in the complaint, while approximately 500 of the cases so far have resulted in the complaint being upheld by the Post Office, with or without a hearing, or some alleged 1/4 of 1% (0.025%) of alleged violations.

The defendant is a thoroughly law abiding corporation. We would estimate that it has spent by this time at least some $300,000 in order to comply with the Pandering Law, as well to comply with the Goldwater Amendment. Its vast expenditures of money, made in an effort to comply with the law, show that it is not a law breaker, but a law observer. To issue an injunction in any case such as this, which has become completely moot by the use of such a computerized

method that not only are mailings to protesters avoided, but also mailings to persons who are not protesters, would be to have the Court issue a useless order -- and an unconstitutional one at that.

I understand that it is hornbook law that a statute must be construed so as to avoid raising questions of constitutionality. We believe that we have raised substantial questions as to constitutionality in the operation and effect of the Pandering Law -- not involved in the Rowan case --, which must be faced if this Court is to issue an order. Succinctly stated, it is a fact that the law cannot be complied with except by denying the defendant its right to communicate to those who would receive its communications, and the right of those who receive such communications to receive them. We submit that the law should be so construed in this case as to mean that there is complete mootness in the case at bar, in order to avoid the raising of these questions.

We have bent over backwards to make any possible settlement with the Government. It has never suggested any deficiency in our computerized system for compliance with

prohibitory orders. It has never suggested any improvement. Since 1971, at least, it has been fully informed of our system's working. What more does the Government want from us? Our standard of attempted compliance, our actual rate of better than 99 3/4% compliance with prohibitory orders, speak for themselves. No injunction need be granted. It could have no possible effect whatsoever. Any practical suggestions for improvements in our computerization program will be gratefully accepted. Can we do more?

I now turn to some details.

Finally, I note that, from the beginning, the Post Office has been in violation of its own rules and regulations and forms for practice. Thus, the standard form complaint of the Post Office Department recites as follows:

> "Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:
> 1. By further mailings to the addressees listed in the order. See exhibit annexed hereto."

However, in this case, all that was annexed to the complaint was a copy of the prohibitory order.

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It was therefore impossible, upon receipt of the complaint, to determine whether the prohibitory order had been violated and impossible to prepare a defense thereto. The complaint was thus issued in violation of the rules and regulations, failed to state a cause of action, and violated the defendant's Sixth Amendment right to be advised of the nature and cause of the accusation against him, and deprived defendant of liberty and property without the due process of law required by the Fifth Amendment to the United States Constitution.

WHEREFORE, deponent prays that the plaintiff's motion for summary judgment be denied, that defendant be granted summary judgment dismissing the complaint, and that the prohibitory order be vacated.

RICHARD S. SCHWARTZ

Sworn to before me this
8th day of November, 1973.

GILSOM SAFFEYE
Notary Public, State of New York
No. 34[illegible]478
Qualified in Kings County
Commission Expires March 30, 19...75

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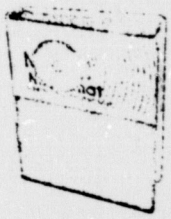

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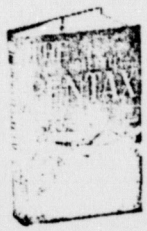

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NEWSFRONT *continued from page 14*

in convention here that Kodak is trial marketing three-solution process for color prints. It may replace present five-solution process. Kodak is concerned about water pollution and silver waste. New process "reduces effluent volume by 40 percent," has bleach-fix that is "completely biodegradable, can be regenerated and allows efficient silver recovery." Seiler said company is working hard to make non-toxic chemicals and cut level of BOD_5. He said Kodak has managed to formulate Ektaprint C stabilizer without zinc, another potential pollutant.

NEW YORK—*Our man Rothschild to speak at communication parley:* Among panelists at 15th annual Wilson Hicks International Conference on Communication Arts (formerly Miami Conference) will be *Popular Photography*'s senior editor, Norman Rothschild. Other participants at meeting, slated for April 28-30 at U. of Miami, Coral Gables, Fla., include Gilbert M. Grosvenor, editor and vice president of *National Geographic*; Erich Hartman of Magnum; Richard Grossman, president of Grossman Publishers; Tony Vaccaro of *Look*; Inge Morath, free-lance photographer and wife of playwright Arthur Miller; Burton McNeeley, undersea photographer; John Schearer, free-lance photographer; Larry Schiller, film maker; Paul Hue, photographer from Holland; Martin Duffy, manager of design and media for A.T.&T Co.; Marcello Ablaza, official photographer to the president of the Phillippines; Dr. Wesley Clark, dean of the School Journalism, Syracuse University; and John Olson, staff photographer of *Life*. Conference also serves as annual meeting for American Society of Magazine Photographers.

NEW YORK—*With deep regret, we note the following deaths:*

Charles Rado, founder and president of Rapho Guillumette photo agency that represents photographers throughout the world. Rado often fostered work of unknown photographers, many of whom were exhibited at Museum of Modern Art.

Dr. Emanuel Goldberg, scientist, author, and retired director general of Zeiss Ikon AG. He emigrated from Paris to Israel, where he founded laboratory for applied optics, now known as EL-OP. He wrote *The Fundamentals of Reproduction Technique* and *The Structure of the Photographic Image*.

A. Aubrey Bodine, photo director of *The Baltimore Sunday Sun* magazine, and winner of hundreds of international photo awards. He had worked with *The Sun* papers for nearly 50 years. Many of his best pictures appeared in *My Maryland*.

Kyoichi Sawada, U.P.I. photographer, killed in Pnompenh, Cambodia, while covering the war. He won Pulitzer Prize in 1966 for picture of Vietnamese mother fleeing enemy attack.

MEMORANDUM AND ORDER BY DOOLING, D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA,

: 72 C 601
-against- : (COFFIN)
:
PENT-R-BOOKS, INC., : MEMORANDUM
: and
Defendant. : ORDER

- - - - - - - - - - - - - - - - - - -X

Appearances:

LLOYD H. BAKER, Esq. (DAVID G. TRAGER, Esq., United States Attorney, of Counsel) for Plaintiff

HERBERT MONTE LEVY, Esq., for defendant

DOOLING, D. J.

In this action to obtain an order commanding compliance with a Post Office Prohibitory Order issued under 39 U.S.C. § 3008 (formerly § 4009), the plaintiff has moved for summary judgment on the administrative record, and defendant has cross-moved on affidavits. The principal objections of defendant are those raised and disposed of in 69 C 1362, 69 C 1290 and 72 C 609 , and what has been said in those dockets need not be repeated here.

The only point made in this case by defendant apart from those passed on in the above dockets is that defendant's allegedly timely mailed Request for Hearing

MEMORANDUM AND ORDER BY DOOLING, D. J.

was ignored. It was mailed to the Postmaster at Newark, New Jersey, from New York City, thirteen days after the receipt of the complaint. In this case, however, remand to consider the timeliness of the mailing is not appropriate. The form of objections allegedly sent to the Postmaster raised no points not resolved against the defendant in the dockets referred to above.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted and defendant's cross-motion is denied. A form of judgment has been approved for entry by the Clerk.

Brooklyn, New York

July 26, 1974.

U. S. D. J.

JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

:

-against- : 72C 601
(COFFIN)

PENT-R-BOOKS, INC., : JUDGMENT

:

Defendant.

- -X

This action came on for hearing on the cross-motions of the parties for summary judgment before the Honorable John F. Dooling, Jr., District Judge, and the motion of plaintiff having been granted and that of defendant having been denied in the decision duly rendered, it is

ORDERED and ADJUDGED that defendant PENT-R-BROOKS, INC., its agents and assigns (1) refrain from any further mailings to RICHARD H. COFFIN, N.J. BELL TEL.CO. GEN.TRANS.ENGRG. DEPT. 540 Broad St. Newark, N.J. 07101,

or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder or resident; (2) immediately delete the above-named party from all mailing lists owned or controlled by it, its

agents or its assigns; and (3) immediately abstain from any sale, rental, exchange or other transaction involving mailing lists bearing the name of the party named above.

Brooklyn, New York

July 26,1974.

Approved:

U. S. D. J.

CLERK

UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF NEW YORK.

- -X

UNITED STATES OF AMERICA,

Plaintiff,

v.

PENT-R-BOOKS, INC.,

Defendant.

- -X

CIVIL ACTION NO. 72C 602.

DOCKET ENTRIES

72C 302 U.S.A. v. PENT R BOOKS INC.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
5/9/72	Complaint filed. Summons issued.	1J$5
5-26-72	Summons returned and filed. Deft srvd 5-25-72.	2
9-27-73	Pltff;s notice of motion ret 10-15-73 and memo in support of motion for summary judgment filed.	3/4
11-29-73	Notice of cross motion and memorandum in support of deft's cross motion for summary judgment filed.	5/6
7-30-74	By DOOLING, J. - Memorandum & order dtd. 7-29-74 granting pltff's motion for summary judgment & denying deft's cross motion filed.	
7-30-74	JUDGMENT dtd. 7-29-74 ordering deft to refrain from further mailings to Anne J. Kelly etc. filed. Copies to attys	
9-19-74	Notice of appeal filed. Duplicate mailed to C of A & pltff. jn	

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R BOOKS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - X

COMPLAINT

Civil Action No.

Plaintiff, UNITED STATES OF AMERICA, by its attorney, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, complaining of the defendant, alleges:

1. This Court has jurisdiction of this action pursuant to Public Law 90-206, Sec. 301 and Title 28, U.S.C., Sec. 1345.

2. The defendant is a New York corporation having an office for the conduct of business at 203 Kings Highway, Brooklyn, New York.

3. On or about April 1, 1969, defendant mailed or caused to be mailed through the U. S. mail to A. Kelly, Sioux City, Iowa (hereinafter referred to as "addressee") material offering for sale certain advertisement of Photographic Manual of Sexual Intercourse.

4. The said item was mailed from Brooklyn, New York, within the Eastern District of New York.

5. The above-described mailing consisted of photographic advertisements which the addressee believes to be erotically arousing or sexually provocative.

6. The addressee requested the Postmaster General to issue an order directing defendant, its agents or assigns, to refrain from further mailings of such material to him.

7. Upon receipt of this request and pursuant to Public Law 90-206, Sec. 301, on April 14, 1969, the local Postmaster, by order of the Postmaster General, issued Prohibitory Order No. 2413, which ordered and directed defendant, its agents and assigns, to delete his name from any sales or transactions involving lists bearing his name, effective 30 days after receipt of the order.

8. A copy of the order was mailed to defendant by registered mail on or about the date it bears.

9. Thereafter, the Postmaster General had reason to believe that defendant or someone acting on its behalf violated the order.

COMPLAINT

10. On or about June 10, 1969, in violation of Prohibitory Order No. 2413, defendant, or someone acting on its behalf, mailed or caused to be mailed through the United States mail to the addressee, material such as that described in paragraph 3 of the complaint.

11. On June 17, 1969, the local Postmaster, by order of the Postmaster General, issued a complaint advising that evidence had been received that defendant, or someone acting on its behalf, had violated Prohibitory Order No. 2413, and advising defendant that any response for hearing had to be filed within 15 days.

12. A copy of the complaint was mailed to defendant by registered mail on or abou the date it bears.

13. Defendant did not request a hearing or otherwise respond to the complaint.

14. On April 30, 1970, a determination was made that defendant or someone acting on its behalf had violated Prohibitory Order No. 2413.

15. A copy of the determination was mailed to defendant by registered mail on or about the date it bears.

16. The Postmaster General thereafter requested the Attorney General, pursuant to the provisions of Public

COMPLAINT

Law 90-206, Sec. 301, to make application to a district court of the United States for an order directing defendant to comply with the order.

WHEREFORE, plaintiff, UNITED STATES OF AMERICA, prays:

a. That the court enter judgment herein requiring defendant, its agents and assigns, to comply with Prohibitory Order No. 2413, and more specifically, that this Court order and direct defendants, its agents and assigns, in conformity with this order to cease and desist from making any further mailings to the designated addressee from all mailing lists owned or controlled by defendant, its agents or assigns, and to refrain from selling, renting, exchanging, or engaging in any other transaction involving mailing lists bearing the name of said addressee.

b. That the Court grant to plaintiff such other and further relief as may be just and proper.

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By
Lloyd H. Baker
Assistant U. S. Attorney

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA, :

Plaintiff, : NOTICE OF MOTION

- against - : 72 C 602

PENT-R-BOOKS, INC., :

Defendant. :

- X

PLEASE TAKE NOTICE that upon the annexed certified copy of the record of the proceeding in the Post Office Department, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a term for the hearing of motions to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, Courtroom 8, on the 15th day of February, 1973, at 4:30 o'clock in the afternoon of that day, or as soon thereafter as counsel may be heard, for an

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

order pursuant to Rule 56 granting summary judgment to the plaintiff, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: Brooklyn, New York
September 26, 1973

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By:

LLOYD H. BAKER
Assistant U. S. Attorney

TO:
HERBERT MONTE LEVY, ESQ.
295 MADISON AVENUE
NEW YORK, NEW YORK 10017

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS.

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT

Washington, D.C. 20260

17 July 1970

CERTIFICATION

I hereby certify that the annexed documents constitute true copies of original records which are in the official custody of the Post Office Department, to wit: P. O. Dockdt No. 18-DM-43 (A. Kelly)

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, on the day and year first above written.

I. F. Kardos
Deputy Assistant General Counsel

POD F... 215
Mar. ...

That said prohibitory order was to take effect on the 30th day after said receipt, and it ordered the respondent to

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

In the Matter of			
Violation of Prohibitory Order			
No. 2413	issued against	Docket No.	P-S-PI-43
Pent R. Books, Inc.	Respondent		
On Behalf of A. Kelly			
	Complainant		

DECISION

A hearing on the question of the issuance of a complaint in the above-captioned docket number was held at New York, NY on December 11, 1969 by the undersigned.

At this hearing a stipulation was entered whereby the attorney for the respondent requested and was granted permission to file such affidavits as he felt necessary subsequent to the Hearing. This stipulation was filed with the Hearing Officer on April 2, 1970.

Based upon the evidence submitted, I hereby find as follows:

1. That on April 1, 1969 the respondent mailed to the complaining addressee, A. Kelly, a mailing piece containing an advertisement.

2. That on April 11, 1969 the complaining addressee filed with the Postmaster, Des Moines, Iowa a POD Form 2150 stating that the Advertisement was considered to be sexually provocative or erotically arousing, and requesting that a prohibitory order be issued.

3. That on April 14, 1969, a Prohibitory Order No. 2413 was issued by the Postmaster, Des Moines, Iowa who was duly authorized and mailed by Registered Mail to the respondent who received it on April 17, 1969.

4. That said prohibitory order was to take effect on the 30th day after said receipt, and it ordered the respondent to refrain from further mailings to the named addressee.

5. That on June 10, 1969, thirty days having elapsed since the receipt of the prohibitory order, the addressee received a mailing piece mailed by the respondent and containing an advertisement essentially similar to the first advertisement.

6. That on June 17, 1969, the Postmaster, Des Moines, Iowa, being duly authorized, issued a complaint to the respondent. The said complaint formed the basis of this hearing.

Based on the above, I hereby decide that a violation of a duly issued prohibitory order did take place.

A consolidated decision dealing with all the objections made by counsel for the respondent is attached hereto and incorporated herewith.

To the extent that any motions are not covered by the above findings, they are hereby denied.

The respondent is hereby notified that an appeal from this decision may be filed within 15 days of the date of issuance of this decision by filing a notice of appeal with supporting briefs with the Assistant General Counsel, Mailability Division, Post Office Department, Washington, DC 20260.

Issued this 30th day of April, 1970.

S/John T. Farrell, Jr.
Hearing Officer

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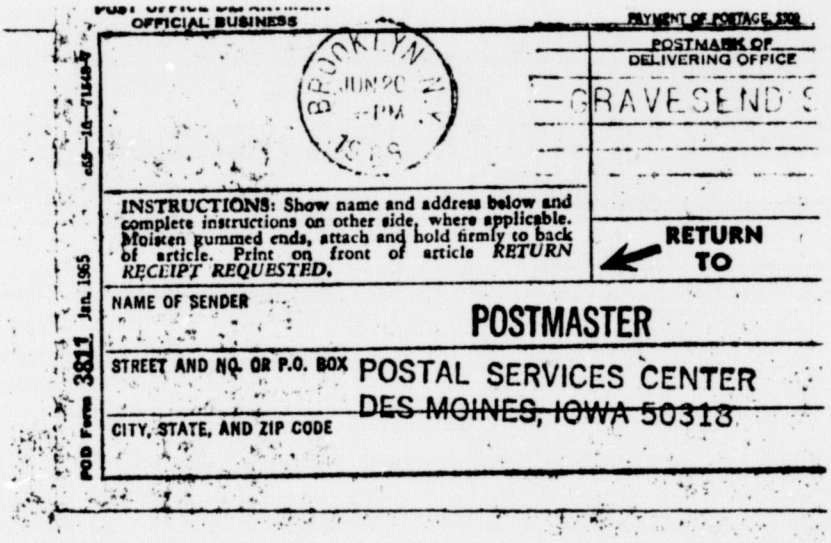


POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PAYMENT OF POSTAGE $300

POSTMARK OF DELIVERING OFFICE

BROOKLYN JUN 20 1 PM 1915

GRAVESEND S

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

POSTMASTER

STREET AND NO. OR P.O. BOX

POSTAL SERVICES CENTER
DES MOINES, IOWA 50318

CITY, STATE, AND ZIP CODE

POD Form 3811 Jan. 1965

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom and when delivered ☐ Show to whom, when, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. 05668

CERTIFIED NO.

INSURED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

Clint R Books Dec

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED JUN 20 1969

ADDRESS WHERE DELIVERED (*only if requested*)

055—16—71548-7 GPO

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

COMPLAINT

In the Matter of Violation of
Prohibitory Order No. [redacted]
Issued Against

[redacted]

[redacted]

[redacted]

and agents or assigns.

On behalf of:

[redacted]
Complaining Addressee

P. O. Docket No. [redacted]

On the [redacted] day of [redacted], 19[redacted], you received Prohibitory Order No. [redacted], copy of which is attached hereto, issued against you and your agents or assigns under authority of Title 39, U.S. Code, §4009, upon request of the above-named addressee.

Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:

1. By further mailings to the addressees listed in the order. See Exhibit attached hereto.
2. You failed to immediately delete from mailing lists owned or controlled by you or your agents or assigns the names of the addressees listed in the order. See Exhibit attached hereto.
3. [redacted]
4. [redacted]

[Strike inapplicable items].

Any response to this Complaint or request for a hearing with respect thereto must be filed, in writing, in the Office of the Regional Counsel, Post Office Department, [redacted], within fifteen (15) days after receipt of this Complaint. Attached hereto is copy of the Department's Rules of Practice relative to answering this Complaint and requesting a hearing in the matter.

[POSTMARK]

Dated: [redacted]

JUN 17 1969

[redacted]
Postmaster

[redacted]

POD Form 2153
May 1968

UNITED STATES GOVERNMENT CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

Memorandum • POST OFFICE DEPARTMENT

SUBJECT: Violation of Prohibitory Order

DATE: June 13, 1969

IN REPLY REFER TO: KVM:rl P.O. CL: 1

FROM: Postmaster
Sioux City, Iowa 51101

YOUR REFERENCE:

TO: Postal Service Center
Des Moines, Iowa 50318

We are enclosing, herewith, evidence of violation of prohibitory order against Pent-R Books Inc., P.O. Box 81, Brooklyn, N.Y. 11223.

The prohibitory order was dated April 14, 1969. The complainant received the enclosed letter on June 12, 1969, from the same mailer in violation of the order.

The complainant requests further action against Pent-R Books Inc.

W. W. Mansfield

Encl:

1351a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

PENT-R BOOKS INC
P. O. BOX 81
BROOKLYN, N. Y. 11223

DES MOINES, IOWA JUN 17 1969 USPO

Rec'd 6-12-69 aK

A. Kelly

BROOKLYN N. Y.

FIRST CLASS U. S. POSTAGE PAID 6c Permit # 9546

FIRST CLASS MAIL

A KELLY
3531 JACKSON ST
SIOUX CITY IA 51104

117

PERSONAL

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRATED BROCHURE offering for sale to Adults Only, a new marriage manual. If you do not wish this mail or if you are not over the age of 21 years, DO NOT OPEN THIS ENVELOPE! Simply mark this envelope "REFUSED", sign your initials and return it to your mailman. Upon the return of this envelope, we will endeavor to remove your name from our mailing list. Thank You.

1352a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

FIRST CLASS
PERMIT No. 28005
BKLYN, N.Y.

BUSINESS REPLY MAIL

NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES

POSTAGE WILL BE PAID BY

PENT-R BOOKS INC.

P.O. Box 1555,
Grand Central Station,
New York, N.Y. 10017

TRY IT! DON'T BUY IT! WITH OUR SPECIAL MONEY BACK GUARANTEE!

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

*FIRST EDITION SPECIAL OFFER - $9.98 (Limited Time Only)

Please check appropriate box!

- ☐ Please ship book and place my name on your mailing list.
- ☐ I am not ordering at this time but place my name on your mailing list.
- ☐ Remove my name from your mailing list.

Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

Signature .....

117

A KELLY
3531 JACKSON ST
SIOUX CITY IA 51104

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PENT-R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 10017

Gentlemen:

Please send me in plain sealed wrapper____ copies of "The Photographic Manual Of Sexual Intercourse" at the First Edition Special price of only $9.98 per copy. I am over the age of 21 years and I have signed the statement on the left to that effect. I understand that if I am not completely satisfied, I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

- ☐ Regular Edition: Handsome Kivar Binding only $9.98
- ☐ Deluxe Edition: Gold-Stamped Casebound Library Volume only $12.98

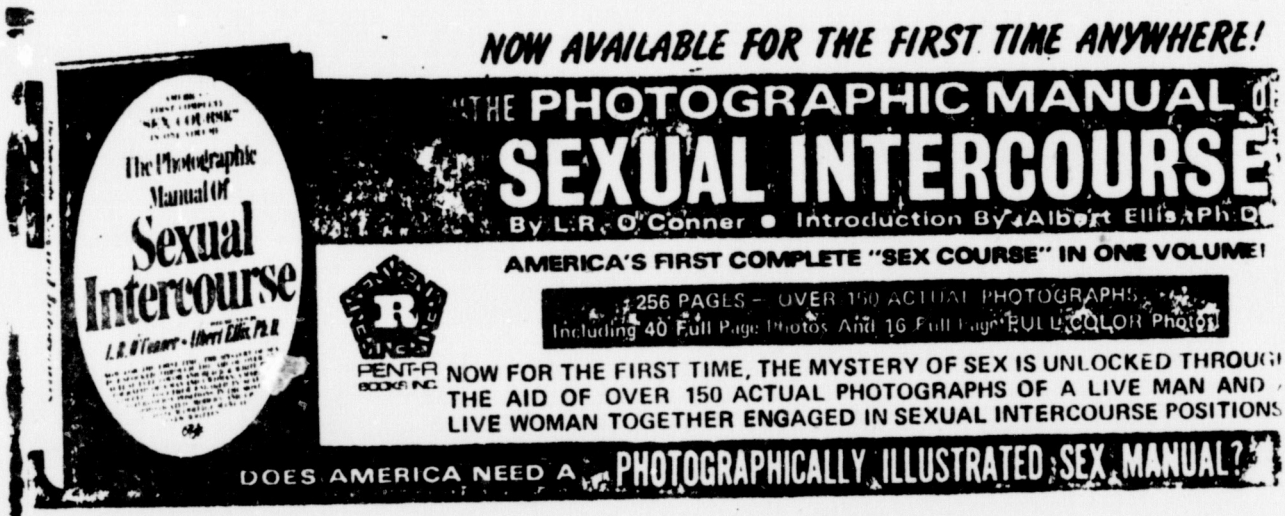
- ☐ I have enclosed $ _____ ☐ Cash ☐ Check ☐ Money Order
- ☐ I have enclosed a $2 Deposit. Please ship C.O.D.

SAVE MONEY! Enclose full payment and save Postage and C.O.D. fees!!

1353a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



Dear Sir,

No one is born with knowledge of how to engage in Sexual Intercourse! How then is one to learn?

The schools, up until at least very recently, have completely and purposely ignored sex education. Ask a school principal or school board official and he will say, "We leave that instruction to parents." Ask a parent if he or she is teaching sex education to their children and you may hear . . . "Don't worry, she has time" . . . or . . . "He'll learn" or "Ask his father, that's his job!" And if the parents fail, where is sexual instruction and knowledge to be obtained? Would you say the school yard or hall, the stoop, the candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear a story of someones' sexual experience. Sneak a look at a few pornographic pictures. Listen to a few lines dropped in a motion picture. Listen to T.V. comedians' subtle jokes. And above all shall we allow our youth to hear every old wives tale, every untruth, every misconception, every fallacy. And then, shall we pat ourselves on the back . . . for we have protected morality? We have protected our society from information on sexual intercourse? Naturally, on the day our son or daughter is married, by some miraculous happening, they will leave the wedding ceremony with a complete, accurate broad knowledge of sex. No one stands to take credit for this knowledge. No one seems to know how our newly married couple has obtained sexual knowledge. (In fact, no one knows IF our newly married couple has obtained sexual knowledge.) Let us all hope that our mythical couple has a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something private, something personal, something one person does not quickly reveal to another. In far too many cases a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is fantastic! Premarital pregnancy is at it's highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our movie theatres are showing lesbian and homosexual features to packed houses. DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL, we ask again? We think yes, most definately yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE REALLY NECESSARY?

We say yes . . . because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indespensable aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader, so that the reader may evaluate them and come to his or her own conclusions. We feel that to publish our book "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" without photographs would be a dis-service to our readers and would confuse rather then enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It was not written for beginners or minors, though much of the information it contains would be found useful by an adult who has the responsibility of teaching the young or inexperienced. This book was designed to teach men and women, even with years of sexual experience, what they may have been doing wrong and what they could and should do to give their mate new sexual pleasures, complete sexual satisfaction and to inspire their mate to new love, devotion and happiness.

The following brochure will give you additional details on the contents of the book. We have also enclosed an order form for your convenience.

We suggest that you order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE", read it, show it to your doctor and if you decide that it does not deserve a permanent place on your bookshelf, simply return it for an immediate refund of your money. It's as simple as that. Our experience has shown us that if we offer a product of value and merit, we won't get many returns. You have absolutely nothing to lose and a great deal of knowledge and happiness to gain.

With my sincere personal good wishes,

Ronald Alvin

PENT-R BOOKS INC. P.O. BOX 1555

GRAND CENTRAL STATION, NEW YORK, N.Y. 10017

Copyright - 1969 Pent-R Books Inc.

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

A BREAKTHROUGH IN SEX EDUCATION

No dolls, no drawings, no illustrations, no pencil sketches, no partially obscured over-printed photographs, no tracings where one sheet must be placed upon another, no men and women wearing skin tights, no tricks where men and women appear in the photographs separately! Now, for educational purposes only, over 100 coital positions are clearly photographed for instruction purposes in over 150 large clear photographs of a real living nude man and a real living nude woman, a married couple, together engaged in sexual intercourse positions with accompanying descriptive text in the most sophisticated, modern and up-to-date sex manual ever published!

AVAILABLE FOR THE FIRST TIME TO THE ADULT GENERAL PUBLIC

This brand new just published giant compendium of sex you will find one of the most informative, educational, instructive, eye-opening and mind clearing sexual manuals that you have ever seen or read. It offers the frankest, clearest, most detailed and explicit information through words and actual photographs on **"HOW TO ENGAGE IN SEXUAL INTERCOURSE"** that has probably ever been written! Over 100 coital positions are frankly described in plain language and photographed in over **150 FULL COLOR AND BLACK & WHITE DETAILED PHOTOS!**

THERE HAS NEVER BEEN A BOOK LIKE THIS BEFORE!

Many will call **"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"** America's First Sex Course." Because for you and your wife, that is exactly what it can be. A step by step specific course in words and clear concise photographs of how to engage in the many forms of physical love and sexual intercourse! It can turn dull confused routine "quickie" sex into exciting sexual episodes which continue to improve each time and provide far greater degrees of pleasure and satisfaction then you or your wife ever thought possible!

Here at last, are the techniques which can transform the staleness apathy and boredom of the marital act into a series of invigorating refreshing, fulfilling experiences . . . each more thrilling than the last!

The Photographic Manual Of Sexual Intercourse will teach you step by step, in minute detail, each touch, each movement, each kiss, each sensitive area of the body, each technique available to you for giving your mate and yourself new heights of sexual enjoyment and contentment. More, in fact, than you ever thought possible!

NOW! Learn from down to earth solid straight no-punches pulled plain language facts and over 150 clear educational Full Color and Black and White photographs the unusually helpful facts you should know about the many varied aspects of sexual intercourse!

OVER 150 FULL COLOR AND B SHOW YOU HOW TO BE A

Now for the first time in any book you can see with your own eyes, in large full color and black and white actual photographs the best positions to use for a wide variety of special purposes and sensual effects!

- Discover the positions that narrows the vaginal opening, giving the man more stimulation!
- Learn the position that automatically forces the woman's thighs to add to penile stimulation!
- Discover the positions which most directly excite the clitoris!
- Find out what position holds the male organ after climax, preventing rapid contraction of the organ!
- Learn the position that allows the penis to penetrate to the neck of the uterus while at the same time providing even more sensation from the caressing touch of the scrotum moving upon the woman!
- Learn the position that holds a partial erection most firmly!

This is only a partial list of what the photographs and text will teach you in this amazing new book!

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

CK & WHITE PHOTOGRAPHS TTER MARITAL PARTNER!

Too many married couples are in the doldrums of on-again off-again "quickie" unembellished intercourse with no variations and no experimentations! This book will take you out of the sexual rut and into the sunshine of fresh new youthful exciting sexual activity!

IMAGINE YOURSELF CONSISTENTLY SATISFYING YOUR SEX PARTNER FAR BEYOND HER OR YOUR WILDEST EXPECTATIONS!

Why not enjoy all the wholesome, healthy thoroughly satisfying sexual delights that are available to you and your sexual partner? It's all so easy and so natural provided you forget the prejudices and fallacies of the bygone eras and recognize the fact that just as there is more to life than eating and sleeping, so there is more to sex than mere "quickie" intercourse! And this is precisely the point this book brings home to you with absolute clarity, detail and the frankest most up-to-date and modern information that is available to the adult general public!

THIS IS NOT A LONG WINDED BOOK OF DULL THEORY!

The "Photographic Manual of Sexual Intercourse" is a clear, live, dynamic, detailed "HOW TO DO IT" manual of step-by-step practical instruction. It teaches you, in plain language, direct and to the point, precisely what to do and how and when to do it to increase not only your own pleasure and satisfaction, but the pleasure and satisfaction of the [illegible]

THIS BOOK HAS ONE MAIN PURPOSE

This book has one main purpose, to teach you how to derive the utmost pleasure, excitement, sensation, ecstasy and satisfaction from sexual intercourse. It is definitely NOT written for persons seeking cheap thrills or those seeking to "ogle" at pictures of persons engaged in sexual intercourse!

WHAT THIS BOOK CAN DO FOR YOU

1) It can help you develop a healthy life-long attitude toward sex! This healthy attitude can improve your general health both mental and physical!
2) It can help you learn how to become a successful "lover husband" and help you to achieve greater success and happiness in every aspect of your business and personal life!
3) It can help you learn how to experience maximum sexual satisfaction from the sex act.
4) It can help you learn how to correct any problem of sexual incompatibility in your marriage! You can learn what causes certain sexual problems and complications and how to avoid and deal with them.
5) It can help you learn the secret of enjoying sex love happiness in the years ahead. How to keep the fire burning and how to keep your sex life from becoming dull and monotonous!

You can learn numerous ways to prolong the act of intercourse. You can learn how to help your wife to achieve a fuller orgasm. How to arouse her to new found passion and how she can learn to arouse you to a new vitalized sexual relationship. You and your wife can both learn through words and photographs what to do and what NOT to do to become a more accomplished lover and sex partner.

And Now, you can also learn with the aid of text and photographs, how to obtain complete sexual satisfaction even WHEN INTERCOURSE IS NOT POSSIBLE!

This is one of the very few books that offers to the general adult public complete detailed chapters on "FEMALE ORAL-ANAL SEXUALITY" "MALE ORAL-ANAL SEXUALITY" SATISFYING SUBSTITUTES FOR SEXUAL INTERCOURSE" "SEXUAL INTERCOURSE FOR THE OLD, ILL AND HANDICAPPED"!

Yes, this is practically a complete guide to a happier sex-love life for married couples! This is the HOW-TO-DO-IT book in the marriage and sexual arts! It makes most other text on the subject obsolete!

SEXUAL KNOWLEDGE IS SEXUAL POWER!

The vivid detailed photographs in this book show with utmost clarity how to adjust postures for the best possible matching of organs, how to make the sexual side of marriage more vibrant by introducing a variety of caresses and positions into the sexual act. Men and women with sexual knowledge are men and women with power to bring satisfaction and fulfillment to their love partners as well as to themselves. "The Photographic Manual Of Sexual Intercourse" will give you the knowledge and power to master all the wonders and aspects of sex. And remember, it is all available to you NOW! All you have to do is use the enclosed order card!

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

READ WHAT OTHERS ARE SAYING ABOUT THIS BOOK

"This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.E.

"This is the first marriage manual I've seen that didn't beat around the bush." Mrs. W.R. New York City.

"This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.K., Los Angeles, Calif.

"I wish this book had been published 12 years ago when we were first married." Mr. & Mrs. A.S., New York City.

"I only wish I had seen this book early in my married life. My marriage finally failed for just those reasons which are covered in chapter Seven of this book. If only I had known what this book now makes so clear." Divorcee who was asked to comment

"We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thanks very much." L.B. & C.K. Chicago, Ill.

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE!

TABLE OF CONTENTS

With the final chapter just complete a few short weeks ago, THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE is the latest, most up-to-date sex manual on the market. It is the sex of today which is presented to you; this is no compilation of ancient wisdom. People change, even the techniques of sex change. This is today's guide to sexual intercourse written for today's people! We ask you to review the table of contents

Preface
Chapter I ..... History of Sex
Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of Sex
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral-Anal Sexuality
Chapter IX ..... Male Oral-Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
Chapter XII ..... Sexual Intercourse During Menstration and Pregnancy
Chapter XIII ..... Satisfying Substitutes
Chapter XIV ..... Sexual Intercourse for the Old, Ill and Handicapped
Chapter XV ..... Compiling Your Own Handbook

We venture to suggest that very few other books offer the complete coverage of this single volume. The above table of contents but suggests the scope of what is offered. Each chapter is a model of clarity, of down-to-earth language which takes you instantly to the heart of the matter. This book was not written for the professional, although we fully expect that many professionals will insist upon having a copy of this book in a prominent position on their bookshelves.

Those who are considering marriage will want a copy of this book. Those who are married and are just beginning to find a certain tedium in their connubial bed will want to seek here for vital answers to their problem. Those who are ill, old, or handicapped will realize that their sex life need not be the gnawing, frustrating problem it now seems to be.

Perhaps you have feelings which you think are unnatural, even abnormal. Yet your sex nature cries out for fulfillment. Which way shall you turn? What can you do? You can read this book and find the answer.

OUR GUARANTEE

TRY IT . . . DON'T BUY IT . . . With our money back offer! We have put a great deal of time, money and effort into this book. We have strong feelings about this book. We feel this book has long been needed in our society of sexual confusion and maladjustment. We feel this book will be of immense value to thousands of men and women. To convince you of our sincerity and of the faith we have in this marvelous book, we make this simple, straightforward guarantee to you. Order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE." Read it. Have your wife read it. If after reading this book you do not feel powerful in your knowledge of sex, if you and your partner are not enjoying new heights of sexual excitement and pleasure, simply return the book. Every penny of your purchase price will be immediately refunded. What could be fairer than that? You have nothing to lose but the few moments it takes to fill out and mail the enclosed order form. If sex is an important part of your life, you owe it to yourself and to your sex partner to take advantage of this pioneering book of sexual knowledge. Please act today! A postage paid reply envelope is enclosed for your convenience! And please remember, you are trying, not buying, because if you are dissatisfied for any reason, your money is returned without question or delay! Please order today! Both you and your wife will be glad that you did!

FIRST EDITION SPECIAL OFFER! Limited Time Only!

The regular price of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is $12.98. This is the price many book stores throughout the country and many mail order firms are selling this book for. To the people who were unable to take advantage of our special pre-publication $9.98 offer, we are making this "First Edition Special Offer" for a limited time only. You may purchase "The Photographic Manual Of Sexual Intercourse" with Handsome Kivar Binding for only $9.98 and save $3 for a limited time only. This special offer may not be repeated again! You may have one chance and one chance only to take advantage of this tremendous offer. Please order today! We have books in stock for immediate shipment. Our money back guarantee of course still applies!

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE! ONLY $9.98

First Edition Special Offer! Limited Time Only!

- 256 Pages Printed On The Finest Heavy Weight Pure White Bond And High Gloss Enameled Paper!
- Handsome Kivar Binding (Special Deluxe Binding Also Available)
- Over 150 Actual Photographs In Black & White And Full Color!
- 40 Full Page Photos & 16 Full Page Full Color Photos!

YOU MUST BE OVER THE AGE OF 21 YEARS TO ORDER!
No Books Will Be Shipped To Unmarried Minors!

USE ENCLOSED ORDER FORM AND POSTAGE PAID ENVELOPE.
(C.O.D. Orders Accepted But Must Be Accompanied By A $2 Deposit.)

PLEASE BOOK . . . Grand Central Station, New York, N.Y. 10017

Gentlemen:

Please rush me in plain sealed wrapper _____ copies of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE."

[ ] Regular Edition. Handsome Kivar Binding $9.98
[ ] Deluxe Edition. Gold Stamped Cushbound Library Volume $12.98
[ ] I have enclosed $ _____ [ ] Cash [ ] Check [ ] Money Order
[ ] I have enclosed $2. Deposit. Please ship C.O.D.

I understand that if I am not completely satisfied, I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

I hereby represent that I am over the age of 21 years and I have signed to that effect below:

_____ signature

Print Name . . . . . .

Address . . . . . .

City . . . . . State . . . . . Zip . . . . .

SAVE MONEY! Enclosed full payment with your order and save postage and C.O.D. charges!

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

GRAVESEND STA.

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

JOHN P. MC NERNEY POSTMASTER
ADMINISTRATIVE SERVICES
DES MOINES, IOWA 50318

STREET AND NO. OR P.O. BOX

POST OFFICE, STATE, AND ZIP CODE

POD Form 3811 Apr. 1967

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

2413

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. 4883110.

CERTIFIED NO.

INSURED NO.

1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

Lent - R

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

L. Wafpert

DATE DELIVERED 4-17-09

3 SHOW WHERE DELIVERED (*only if requested*)

15-16— 45-1 3FD

1360a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
PROHIBITORY ORDER

In the Matter of

Pent-R Books, Inc.

Mailer

Post Office Box 81

Brooklyn, New York 11223

and agents or assigns

PROHIBITORY ORDER

NO. 2413

WHEREAS, we were furnished a mailing piece containing advertising matter which you mailed or caused to be mailed to

A KELLY
3531 JACKSON ST
SIOUX CITY IA 51104

(Name of Addressee)

(Address)

and

WHEREAS, said addressee has determined your advertisement to be a pandering advertisement offering for sale erotically arousing or sexually provocative matter; and

WHEREAS, said addressee has requested the issuance of an order pursuant to the provisions of Title 39, U.S. Code, §4009, a copy of which law is printed on the reverse side hereof, directing you and your agents or assigns, to refrain from making any further mailings to him [redacted] with [redacted].

NOW, THEREFORE, pursuant to the cited statute, you, your agents and assigns, are hereby ordered:

(1) To refrain from any further mailings to the following parties at the indicated address, or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder, resident, boxholder, postal patron, rural route boxholder, and local, effective on the 30th calendar day after receipt of this order:

Anne J. Kelly

ADDRESS: 3531 Jackson Street
(Street)

Sioux City (City) Iowa (State) 51104 (ZIP Code)

(2) To immediately delete the above-named parties from all mailing lists owned or controlled by you or your agents or assigns.

(3) To immediately abstain from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the parties mentioned above.

[POSTMARK]

DES MOINES, IOWA APR 14 1969 USPO

Dated: April 14, 1969

John P. McInerney,
Postmaster

Des Moines, Iowa 50318
City State ZIP Code

by

Roy H. Francisco
Chief, Administrative Services
Postal Services Center

POD Form 2152
May 1968

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

PUBLIC LAW 90-206 **December 16, 1967**

"**§4009. Prohibition of pandering advertisements in the mails**

"(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postmaster General to refrain from further mailings of such materials to designated addressees thereof.

"(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described subsection (a) of this section, the Postmaster General shall e an order if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

"(c) The order of the Postmaster General shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after receipt of the order. The order of the Postmaster General shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

"(d) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, he shall serve upon the sender, by registered certified mail, a complaint stating the reasons for his bel and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

"(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punished by the court as contempt thereof.

"(f) Receipt of mail matter thirty days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

"(g) Upon request of any addressee, the order of the Postmaster General shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

"(h) The provisions of subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, United States Code, shall not apply to any provisions of this section.

"(i) For the purposes of this section—

"(1) mail matter, directed to a specific address covered in the order of the Postmaster General, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postmaster General's order; and

"(2) the term 'children' includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.".

(b) The table of contents of chapter 51 of title 39, United States Code, is amended by adding at the end thereof—

"4009. Prohibition of pandering advertisements in the mails."

SEC. 302. The provisions of this title shall become effective on the one hundred and twentieth day after the date of enactment of this Act.

Effective Date: 4-15-68.

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POST OFFICE DEPARTMENT
NOTICE FOR PROHIBITORY ORDER AGAINST SENDER OF PANDERING ADVERTISEMENT IN THE MAILS

I, A. KELLY (Print), addressee [parent of minor addressee] of the enclosed mailing from PETER BOOKS INC (Print) P.O. BOX 1555, GRAND CENTRAL STATION, N.Y. 10017, consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, 4009, I request that the above-named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailing to me [as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday].

A. A. Kelly, October 19, 19[illegible]
Signature Date

3531 Roosevelt St.
Street

Beaver City, Nebraska 6[illegible]
City State ZIP Code

NAMES OF CHILDREN	BIRTH DATE

NOTE: This notice must be accompanied by the objectionable advertisement and the envelope, or other mailing wrapper, in which the advertisement was received.

POD Form 2150
May 1968

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

1363a

PENT-R BOOKS

P. O. BOX 81
BROOKLYN, N. Y. 11223

BEL MOINES, IOWA
APR 14 1969
U.S.P.O.

BROOKLYN N. Y.

FIRST CLASS U.S. POSTAGE PAID 6c Permit # 9546

FIRST CLASS MAIL

A KELLY
3531 JACKSON ST
SIOUX CITY IA 51104

PERSONAL Card 2/13

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRATED BROCHURE offering for sale to Adults Only, a new marriage manual. If you do not wish this mail or if you are not over the age of 21 years, DO NOT OPEN THIS ENVELOPE! Simply mark this envelope "REFUSED", sign your initials and return it to your mailman. Upon return of this envelope, we will endeavor to remove your name from our mailing list. Thank You.

1364a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

FIRST CLASS
PERMIT No. 28005
BKLYN, N.Y.

BUSINESS REPLY MAIL

NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES

POSTAGE WILL BE PAID BY

PENTHER BOOKS INC.

P.O. Box 1555,
Grand Central Station,
New York, N.Y. 10017

TRY IT! DON'T BUY IT! WITH OUR SPECIAL MONEY BACK GUARANTEE!

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

*SPECIAL PRE-PUBLICATION PRICE -- ONLY $9.98 (Limited Time Only)

Please check appropriate box!

Please ship book and place my name on your mailing list.

I am not ordering at this time but place my name on your mailing list.

Remove my name from your mailing list.

Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

Signature .....

37 A KELLY
3531 JACKSON ST
SIOUX CITY IA 51104

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PENT-R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 10017

Gentlemen:

Enclosed please find $ .....

[ ] Cash [ ] Check [ ] Money Order

Please rush me in plain sealed wrapper ____ copies of "The Photographic Manual Of Sexual Intercourse" at the special pre-publication price of only $9.98 per copy. I am over the age of 21 years and I have signed the statement on the left to that effect. I understand that I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

1365a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

NOW AVAILABLE FOR THE FIRST TIME ANYWHERE!

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

AMERICA'S FIRST COMPLETE "SEX COURSE" IN ONE VOLUME!

NOW FOR THE FIRST TIME, THE MYSTERY OF SEX IS UNLOCKED THROUGH THE AID OF OVER 150 ACTUAL PHOTOGRAPHS OF A LIVE MAN AND A LIVE WOMAN TOGETHER ENGAGED IN SEXUAL INTERCOURSE POSITIONS!

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL?

PENT-R BOOKS INC., P.O. BOX 1555, GRAND CENTRAL STATION, NEW YORK, N.Y. 10017

Dear Sir,

No one is born with knowledge of how to engage in Sexual Intercourse! How then is one to learn?

The schools, up until at least very recently, have completely and purposely ignored sex education. Ask a school principal or school board official and he will say, "We leave that instruction to parents." Ask a parent if he or she is teaching sex education to their children and you may hear . . . "Don't worry, she has time" . . . or . . . "He'll learn" or "Ask his father, that's his job!" And if the parents fail, where is sexual instruction and knowledge to be obtained? Would you say the school yard or hall, the stoop, the candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear a story of someones' sexual experience. Sneak a look at a few pornographic pictures. Listen to a few lines dropped in a motion picture. Listen to T.V. comedians' subtle jokes. And above all shall we allow our youth to hear every old-wives-tale, every untruth, every misconception, every fallacy. And then, shall we pat ourselves on the back . . . for we have protected morality? We have protected our society from information on sexual intercourse? Naturally, on the day our son or daughter is married, by some miraculous happening, they will leave the wedding ceremony with a complete, accurate broad knowledge of sex. No one stands to take credit for this knowledge. No one seems to know how our newly married couple has obtained sexual knowledge. (In fact, no one knows IF our newly married couple has obtained sexual knowledge.) Let us all hope that our mythical couple has a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something private, something personal, something one person does not quickly reveal to another. In far too many cases, a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is fantastic! Premarital pregnancy is at it's highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our movie theatres are showing lesbian and homosexual features to packed houses. DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL, we ask again? We think yes, most definitely yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE REALLY NECESSARY? We say yes! . . . because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indespensible aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader, so that the reader may evaluate them and come to his or her own conclusions. We feel that to publish our book "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" without photographs would be a dis-service to our readers and would confuse rather then enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It was not written for beginners or minors, though much of the information it contains would be found useful by an adult who has the responsibility of teaching the young or inexperienced. This book was designed to teach men and women, even with years of sexual experience, what they may have been doing wrong and what they could and should do to give their mate new sexual pleasures, complete sexual satisfaction and to inspire their mate to new love, devotion and happiness.

The following brochure will give you additional details on the contents of the book. We have also enclosed an order form for your convenience.

We suggest that you order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE," read it, show it to your doctor and if you decide that it does not deserve a permanent place on your bookshelf, simply return it for an immediate refund of your money. It's as simple as that. Our experience has shown us that if we offer a product of value and merit, we won't get many returns. You have absolutely nothing to lose and a great deal of knowledge and happiness to gain.

With my sincere personal good wishes,

Ronald Alvin

Ronald Alvin

P.S. This book cannot now be obtained in any book store or from any other mail order firm. It is presently only available from the publisher, Pent-R Books Inc.

Copyright - 1969 Pent-R Books Inc.

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A BREAKTHROUGH IN SEX EDUCATION

No dolls, no drawings, no illustrations, no pencil sketches, no partially obscured over-printed photographs, no tracings where one sheet must be placed upon another, no men and women wearing skin tights, no tricks where men and women appear in the photographs separately! Now, for educational purposes only, over 100 coital positions are clearly photographed for instruction purposes in over 150 large clear photographs of a real living nude man and a real living nude woman, a married couple, together engaged in sexual intercourse positions with accompanying descriptive text in the most sophisticated, modern and up-to-date sex manual ever published!

AVAILABLE FOR THE FIRST TIME TO THE ADULT GENERAL PUBLIC!

This brand new just published giant compendium of sex you will find the most informative, educational, instructive, eye-opening and mind clearing sexual manual that you have ever seen or read, BAR NONE! It offers the frankest, clearest, most detailed and explicit information through words and actual photographs on "HOW TO ENGAGE IN SEXUAL INTERCOURSE" that has ever been written! Over 100 coital positions are frankly described in plain language and photographed in over 150 FULL COLOR AND BLACK AND WHITE DETAILED PHOTOS!

THERE HAS NEVER BEEN A BOOK LIKE THIS BEFORE!

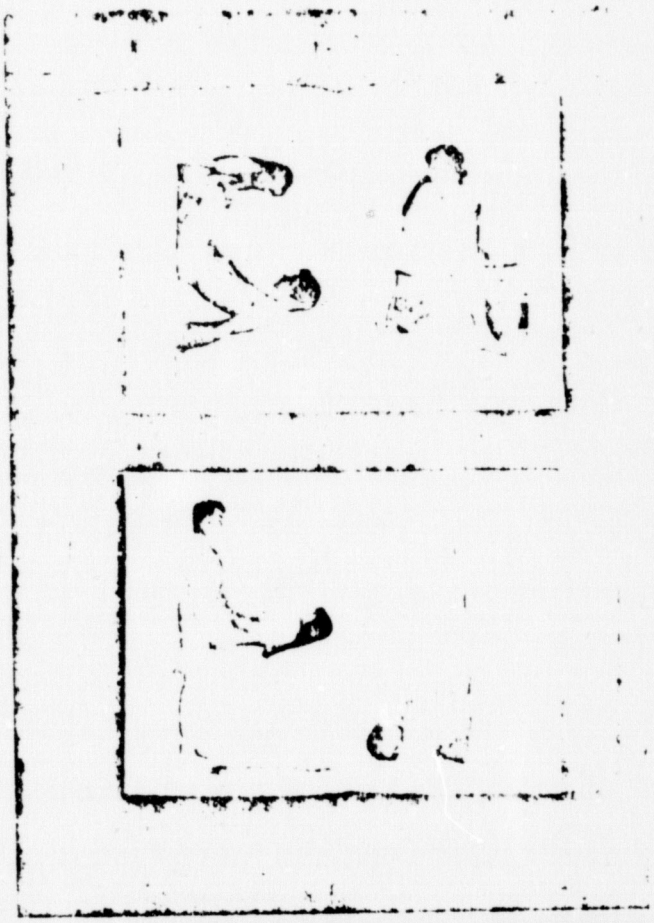
Many will call "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" America's First Sex Course." Because for you and your wife, that is exactly what it can be. A step by step specific course in words and clear concise photographs of how to engage in the many forms of physical love and sexual intercourse! It can turn dull confused routine "quickie" sex into exciting sexual episodes which continue to improve each time and provide far greater degrees of pleasure and satisfaction than you or your wife ever thought possible!

Here at last, are the techniques which transform the staleness, apathy and boredom of the marital act into a series of invigorating refreshing, fulfilling experiences ... each more thrilling than the last!

The Photographic Manual Of Sexual Intercourse will teach you step by step, in minute detail, every touch, every movement, every kiss, every sensitive area of the body, every technique available to you for giving your mate and yourself new heights of sexual enjoyment and contentment. More, in fact, than you ever thought possible!

NOW! Learn from down to earth solid straight no panches pulled plain language facts and over 150 clear educational Full Color and Black and White photographs all that you will ever need to know about the many varied aspects of sexual intercourse!

THIS BOOK IS SO FANTASTIC, SO MODERN, INFORMATIVE, EDUCATIONAL, SO COMPLETE, THAT IT WILL BE THE LAST BOOK ON SEX THAT YOU WILL EVER BUY



OVER 150 FULL COLOR AND B... SHOW YOU HOW TO BE A...

Now, for the first time in any book you can see with your own eyes, in large full color and black and white actual photographs the best positions to use for a wide variety of special purposes and sensual effects!

- Discover the positions that narrows the vaginal opening, giving the man more stimulation!
- Learn the position that automatically forces the woman's thighs to add to penile stimulation!
- Discover the positions which most directly excite the clitoris!
- Find out what position holds the male organ after climax, preventing rapid contraction of the organ!
- Learn the position that allows the penis to penetrate to the neck of the uterus while at the same time providing even more sensation from the caressing touch of the scrotum moving upon the woman!
- Learn the position that holds a partial erection most firmly!

This is only a partial list of what the photographs and text will teach you in this amazing new book!

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K & WHITE PHOTOGRAPHS ER MARITAL PARTNER!

Too many married couples are in the doldrums of on-again off-again "quickie" unembellished intercourse with no variations and no experimentations! This book will take you out of the sexual rut and into the sunshine of fresh new youthful exciting sexual activity!

IMAGINE YOURSELF CONSISTENTLY SATISFYING YOUR SEX PARTNER FAR BEYOND HER OR YOUR WILDEST EXPECTATIONS!

Why not enjoy all the wholesome, healthy thoroughly satisfying sexual delights that are available to you and your sexual partner? It's all so easy and so natural provided you forget the prejudices and fallicies of the bygone eras and recognize the fact that just as there is more to life than eating and sleeping, so there is more to sex than mere "quickie" intercourse! And this is precisely the point this book brings home to you with absolute clarity, detail and the frankest most up-to-date and modern information that has ever been available to the adult general public!

THIS IS NOT A LONG—WINDED BOOK OF DULL THEORY!

The "Photographic Manual of Sexual Intercourse" is a clear, live, dynamic, detailed "HOW TO DO IT" manual of step-by-step practical instruction. It teaches you, in plain language, direct and to the point, precisely what to do and how and when to do it to increase not only your own pleasure and satisfaction, but the pleasure and satisfaction of the one you love!

THIS BOOK HAS ONE MAIN PURPOSE

This book has one main purpose, to teach you how to derive the utmost pleasure, excitement, sensation, ecstasy and satisfaction from sexual intercourse. It is definitely NOT written for persons seeking cheap thrills or those seeking to 'ogle" at pictures of persons engaged in sexual intercourse!

WHAT THIS BOOK WILL DO FOR YOU

1) You will develop a healthy life-long attitude toward sex! This healthy attitude will improve your general health both mental and physical!
2) You will learn how to become a successful "lover husband" which will help you to achieve greater success and happiness in every aspect of your business and personal life!
3) You will learn how to experience maximum sexual satisfaction from the sex act!
4) You will learn how to correct any problem of sexual incompatibility in your marriage! You will learn what causes certain sexual problems and complications and how to avoid and deal with them.
5) You will learn the secret of enjoying sex love happiness in the years ahead. How to keep the fire burning and how to keep your sex life from becoming dull and monotonous!

You will learn numerous ways to prolong the act of intercourse. You will learn how to help your wife to achieve a fuller orgasm. How to arouse her to new found passion and she will learn to arouse you to a new vitalized sexual relationship. You and your wife will both learn through words and photographs what to do and what NOT to do to be sure a more accomplished lover and sex partner.

And Now, you can also learn with the aid of text and photographs, how to obtain complete sexual satisfaction even WHEN INTERCOURSE IS NOT POSSIBLE!

This is the first time that a book has been offered to the general adult public that offers complete detailed chapters on "FEMALE ORAL ANAL SEXUALITY" "MALE ORAL ANAL SEXUALITY" "SATISFYING SUBSTITUTES FOR SEXUAL INTERCOURSE" "SEXUAL INTERCOURSE FOR THE OLD, ILL AND HANDICAPPED"!

Yes, this is a complete guide to a happier sex love life for married couples! This is the HOW-TO-DO-IT book in the marriage and sexual arts! It makes every other text on the subject obsolete!

SEXUAL KNOWLEDGE IS SEXUAL POWER!

The vivid detailed photographs in this book show with utmost clarity how to adjust postures for the best possible matching of mates, how to make the sexual side of marriage more vibrant by introducing a variety of caresses and positions into the sexual act. Men and women with sexual knowledge are men and women with power to bring satisfaction and fulfillment to their love partners as well as to themselves. "The Photographic Manual Of Sexual Intercourse" will give you the knowledge and power to master all the wonders and aspects of sex. And remember, it is all available to you NOW! All you have to do is use the enclosed order card!

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READ WHAT OTHERS ARE SAYING ABOUT THIS BOOK

"This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.L.

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THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE!

TABLE OF CONTENTS

With the final chapter just complete a few short weeks ago, THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE is the latest, most up-to-date sex manual on the market. It is the sex of today which is presented to you, this is no compilation of ancient wisdom. People change, even the techniques of sex change. This is today's guide to sexual intercourse written for today's people! We ask you to review the table of contents:

Preface
Chapter I ..... History of Sex
Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of Sex
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral Anal Sexuality
Chapter IX ..... Male Oral Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
Chapter XII ..... Sexual Intercourse During Menstration and Pregnancy
Chapter XIII ..... Satisfying Substitutes
Chapter XIV ..... Sexual Intercourse for the Old, Ill and Handicapped
Chapter XV ..... Compiling Your Own Handbook

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.....
signature

Print Name. ..... Age. .....

Address. .....

City. ..... State. ..... Zip. .....

DEFENDANT'S NOTICE OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.

----------x

NOTICE OF CROSS MOTION.

Docket No.
72 C 602

The defendant upon the annexed affidavits, cross-moves the Court as follows:

1. To dismiss the action, without prejudice to restoring it to the calendar upon a further showing of a further alleged violation of the law, under the general principles of equity discretion.

2. To grant summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

3. To vacate the purported prohibitory order issued in this case.

DEFENDANT'S NOTICE OF CROSS-MOTION

4. To grant such other, further and different relief as to the Court may seem just and proper in the premises.

SIGNED:

HERBERT MONTE LEVY
Attorney for Defendant
295 Madison Avenue
New York, New York 10017
689-2220

AFFIDAVIT OF HERBERT MONTE LEVY IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant,

----------x

ANSWERING AFFIDAVIT OF HERBERT MONTE LEVY, Esq.

Docket # 72 C 602

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

HERBERT MONTE LEVY, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the attorney for PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment, and in support of our cross-motion for summary judgment. I am personally and fully familiar with all the facts set forth herein.

At the outset, I note that this case is thoroughly moot, and that there is no case or controversy presently pending before this Court; any order entered by this Court

enforcing the prohibitory order (hereinafter sometimes PO) would be a useless order. As shown by the annexed affidavit of RICHARD S. SCHWARTZ, the defendant has taken every precaution humanly possible -- and more so -- using every possible available computer technology, to insure that second mailings are not made to persons in regard to whom PO's have been issued. Indeed, I myself have asked the Justice Department representatives whom I met with on this case on September 25, 1973 in Washington D.C. -- Messrs. Schiffer and Cogbil -- whether they had any suggestions as to how my client might take any better precaution to insure against violations, and they were silent on this score. Nor has the Assistant United States Attorney in charge of this case locally, Lloyd Baker, Esq., ever been able to suggest any additional precautions which my client should take.

Not only has my client taken every precaution to avoid the possibility of a second mailing, but my client's position, as stated in the annexed affidavit of Mr. Schwartz, is that it has no intention whatsoever of violating any PO, that under its existing computer technology it cannot violate the PO even if it wanted to; accordingly, there is not only no threat of violation of a PO, but no possibility

of violation of the PO (barring computer error). Certainly, a computer error could not be the basis for any finding of a contempt, nor could a human error, perhaps by feeding an erroneous entry into the computer, ever be deemed a contempt. Hence, since nothing can be accomplished by any order to be entered, and since there is neither threat nor possibility of an intentional violation of a Court order, there is no ground for equity to issue an injunction. Certainly, in its discretion, no injunction should issue. The case, too, is clearly moot, and we cannot see how there is any case or controversy within the meaning of the United States Constitution, which would give this Court jurisdiction.

Nonetheless, though we note this plea in bar because of lack of jurisdiction, because of lack of case or controversy, mootness, and no threat or intent by the defendant to act illegally, we now turn to other aspects of the matter.

The so-called Pandering Law, 39 U.S.C. Section 4009, gives complete discretion to the complaining addressee to determine whether the advertisement occasioning the Prohibitory Order (hereinafter sometimes "PO") is indeed a pandering advertisement. Of course, many complaining

addressees, whose libido is aroused by non-sexual materials or who are eager to shut off the mailed flow of advertisements, have certified that an advertisement is a pandering one, when to a more reasonable person it might appear that such an advertisement was not pandering, i.e., neither erotically arousing nor sexually provocative. Thus, according to the Report of the Commission on Obscenity and Pornography (Bantam Books Edition, 1970), at p. 133:

> "Prohibitory orders have been issued against nearly 400 separate business firm names mailing sexually oriented materials; orders were also issued against dozens of business firms advertising nonsexual products."

However, according to information we have received, the Government has not sought even one Court order to enforce a postal prohibitory order against any of the dozens of business firms advertising nonsexual products. It has sought Court orders only when the first mailing was -- in the judgment of the Post Office -- pandering, i.e.,of a sexually provocative or erotically arousing type. Thus, for example, I have received information, and therefore allege, that while prohibitory orders have been obtained against mailings made by such organizations as the American Civil Liberties Union and the Practicing Law Institute --

neither of which mail any material which could conceivably be called sexually provocative or erotically arousing -- the Post Office and its successor, the Postal Service, have completely failed to go into Court to seek a Court Order enforcing a PO, even when there has been a violation of the PO. We defy the Government to show otherwise.

Thus, the Government has been selectively determining in which cases it should seek a Court order. Since nothing can happen to a mailer unless and until he violates a Court order, it is quite clear that Post Office censorship is now being used in the place and stead of the discretion of the complaining addressee. Thus, the First Amendment is violated, because as construed and applied, and in its operation and effect, the law vests the plaintiff and the Attorney General with the power to make discretionary evaluations of material, and to determine which advertisers to move against, on the basis of the type of material advertised. The underlying statute is repugnant to the First Amendment and deprives defendant of its First Amendment rights, and is further repugnant to the due process clause of the Fifth Amendment, and further deprives

defendant of liberty and property without the due process of law required by the Fifth Amendment, as well as depriving defendant of the equal protection of the laws under the said Fifth Amendment.

The administrative complaint issued by the Post Office did not state any cause of action, in that it failed to allege the date of the alleged second mailing, and in that it further failed to allege that such alleged mailing was made more than 30 days after the defendant's alleged receipt of the alleged PO.

As construed and applied, and in their force and effect, 39 U. S. C. Section 4009 and the Rules and Regulations promulgated thereto and thereunder, are repugnant to the due process of law clause of the Fifth Amendment and to the Sixth Amendment, and deprive defendant of liberty and property without said due process, and of its right under the Sixth Amendment to a trial by one who is impartial, to be informed of the nature and cause of the accusation, to confront and cross-examine the witnesses against it, and to have compulsory process for obtaining witnesses, the defendant not being given the "full hearing" afforded him according to the decision of the Supreme Court of the United States in Rowan v. United States Post Office Department, 397 U.S. 728 (1970), for the following reasons:

AFFIDAVIT OF HERBERT MONTE LEVY

In every Post Office hearing, the hearing officer--an employee of the Post Office which is bringing the complaint--has been the prosecutor, the judge, the jury, and, to the extent to which he has introduced in evidence varying papers, a witness. Wherever the Post Office has purportedly determined that defendant or someone acting in its behalf has violated a PO, such determination has been made without the testimony of any person whatsoever identifying any materials or the dates of their being received or sent, thus without any legal evidence whatsoever. Despite repeated demand made therefor by the defendant here, no complaining addressee has ever been produced at an administrative hearing, nor has any such person's testimony been permitted to be taken by deposition after due and proper requests therefor, the Post Office disregarding its own rules and regulations in regard thereto, and consistently failing to give any information whatsoever on how its own rules and regulations are being implemented. It is our understanding that the Post Office has never even inquired as to the willingness of the complaining addressee to appear and give testimony at a Post Office hearing. Thus, any mere indication by a complaining addressee, or any written (but invariably unsworn)

statement by the complaining addressee, as to the date of receipt of the second mailing, has been accepted as uncontrovertable Gospel truth by the Post Office, with no opportunity being given to the defendant to show error or hostility on the part of the complaining witness.

Insofar as the plaintiff may rely upon the presumption of 39 U. S. C. Section 4009(f), such presumption is arbitrary, capricious, unwarranted and unreasonable, especially in view of the notoriously poor mail service of the last several years.

Though the notice of motion recites that it is proceeding upon an annexed certified copy of the record of the proceedings in the Post Office Department, there is absolutely no copy of any certification whatsoever annexed to the papers that have been served upon defendant. Since no affidavit of any sort has been submitted with the Government's moving papers, there is thus simply no factual basis whatsoever upon which this Court can imply or find any fact whatsoever upon which to base the injunction that the Government seeks. Accordingly, this proceeding must be dismissed. However, on the bare possibility that there is a certification

in existence and that an inadvertent clerical error resulted in no copy of the certification being served with the motion papers (though this is unlikely, in view of the fact that amongst the numerous cases in which summary judgment papers were served upon defendant, there is frequently an absence of such certification), we nonetheless go on to note the following, in regard to the merits of the Government's application.

Amongst the papers submitted to the Court is what purports to be a return receipt executed by defendant, for the particular prohibitory order involved in this case. However, there is simply nothing whatsoever to tie in that particular return receipt with the particular prohibitory order. In this connection, it should be noted that this particular defendant has received approximately 200,000 Prohibitory Orders. The Post Office had issued approximately 325,000 Prohibitory Orders by December 31, 1969. Vol. III, Technical Report of the Commission on Obscenity and Pornography, p. 161. It would thus be the easiest thing in the world for the Post Office to have mixed up a particular prohibitory order with a return receipt for another prohibitory order, or with a return receipt for a complaint, or

with a receipt for virtually any communication between the Post Office and the defendant, -- or between others -- and to have annexed that to the prohibitory order as the purported receipt for the particular prohibitory order. In the complete absence of any identification whatsoever of the return receipt being a return receipt for the particular prohibitory order, there is simply no proof whatsoever as to either the receipt of the prohibitory order by the defendant or of the date of such receipt. In the absence of proof as to receipt and/or date of receipt, obviously there can be no finding of a violation of that prohibitory order which would have become effective 30 days from the date of its receipt. Since there is no showing of the fact of receipt or the date of receipt, it is thus impossible to show what was the effective date of the order, and therefore impossible to show whether or not there had been a violation by a second mailing, assuming at this moment that a second mailing had been made.

The Pandering Law, as it existed at the time of the alleged violation complained of here, did not require merely that a prohibitory order be

issued as an order of the Post Office, or its present successor the Postal Service, but required that the prohibitory order be issued by the Postmaster General. In the case at bar, the prohibitory order was not issued by the Postmaster General.

In the case at bar, the prohibitory order was not issued by the Postmaster General, nor even by a local postmaster, nor even by an identifiable individual. On the contrary, it was signed by some anonymous individual, signing by initials only, or, if a name was given, where his status was completely undisclosed, even to this time. We know of no statutory or other authority pursuant to which a delegation was made to any such anonymous or virtually anonymous person; if there exists any such delegation, by regulation or toherwise, we are completely unaware of any statutory authority for such delegation. Therefore, the original prohibitory was a complete nullity, and the entire proceeding must fall as being without a foundation, the Government's motion for summary judgment should be denied, and summary judgment should be granted to the defendant.

AFFIDAVIT OF HERBERT MONTE LEVY

The prohibitory order prohibited a mailing to (possibly among others) a person by the name of Anne J. Kelly . However, the second alleged mailing was not to such person, but was addressed to a different name, to wit, A. Kelly , a person not named in the prohibitory order as one to whom a mailing was prohibited. Thus, there was clearly no violation of the prohibitory order.

We turn next to the problem of whether, even assuming that the record is properly certified and that the so called evidence of date of receipt of the second mailing was admissible, -- both assumptions being purely for purposes of argument, -- a violation of the prohibitory order has been made out. We note, at the outset of this facet of the argument, that there is completely lacking any proof whatsoever of the date of the second mailing, that such date was never alleged, and that therefore the defendant was never accorded due process of law under the Fifth Amendment and the right to know the nature and cause of the accusation against it under the Sixth Amendment. Just as significant, however, is the fact that the second mailing bears no

postmark whatsoever. Thus, the Government is forced to rely upon the statutory presumption found in Section 4009 (f), that a mailing received more than 30 days after the effective date of prohibitory order is presumed to have been sent in violation of the order. But, as we show in our brief, the effective date of the order is 30 days after it has been received, so that there is no presumption of a violation unless the second alleged mailing was allegedly received 60 days or more after the date of receipt of the prohibitory order.

In the case at bar, it is quite clear that the presumption does not operate, since, according the Government the benefit of every doubt and assuming for purposes of this argument solely that the evidence is admissible, the most that the Government alleged file shows is that the prohibitory order was received by defendant on April 17, 1969 and that the second alleged mailing was received by the addressee on June 12, 1969 -- being a difference of less than 60 days between such two dates. Thus, the presumption cannot operate, and in the absence of any proof whatsoever other than that to be gained by the use of the presumption, it is quite clear that the Government has not made out a violation of the prohibitory order, and that summary judgment should be granted to the defendant, dismissing the complaint.

AFFIDAVIT OF HERBERT MONTE LEVY

We come next to the question of admissibility of the evidence of the alleged date of receipt of the second alleged mailing. In view of the improper certification of the record, we do not see how such proof can be admissible in any event; it is completely unsworn to, and it is the rankest kind of hearsay. The Government, in its brief, has not attempted to sustain the admissibility of this evidence. We expect, however, that the Government will urge that, assuming proper certification, it is admissible under the Federal Business Records Act (28 U. S. C. Section 1732 (a)) as a record kept in the ordinary course of business, it being the ordinary course of business to keep such records. However, as we show in our brief, since the business involved is that of the Post Office, and the entries as to alleged dates of receipt were made by third persons, not by the Post Office, such rule does not apply. Moreover, even if such a rule did apply, in a normal case, it would not be applicable here, for this reason:

The normal reason for permitting evidence of business records to be admitted is that such records are inherently reliable. But in a prohibitory order-pandering case, we submit, such evidence is inherently unreliable. For several reasons, as follows:

AFFIDAVIT OF HERBERT MONTE LEVY

a) The type of person who goes to the time and trouble of going to the Post Office to obtain a prohibitory order rather than merely tear up the material which offends him, especially when -- as here -- he has been given notice of the contents of the envelope (see the right hand botton of the mailing envelope), is obviously the type of person who is sorely offended by sexually oriented material, the type of person, indeed, who very well might, usually does, wish to see as much trouble caused to the mailer of such material as possible, even when, as here, the material involved has been held to be not obscene. This is graphically illustrated, despite all the hypocrisy of the Pandering Law, in the statement of one addressee, in the case purportedly pending in this Court of United States v. Pent-R Books,72 C 606; where the addressee noted as follows on the notice (request) for prohibitory order:

> "I request more than this (see below). This form evades the real issue. I have no minor children in my home, but YOU know this literature is reaching homes that have minor children. I AM NOT CONTENT WITH MERELY STOPPING THIS TYPE OF PORNOGRAPHIC MAIL FROM REACHING MY HOME; I EXPECT THE POST OFFICE AND JUSTICE DEPTS. TO FLUSH OUT THE SOURCE OF THIS OBSCENE MAIL, GET HIM OR THEM IN PRISON, AND STOP ANY OF THIS STUFF FROM BEING MAILED OUT AT ALL."

Similarly, in another purportedly pending case, in the memorandum from the Post Office Dept. dated June 3, 1969, the Postmaster recites that the complaining addressee, Mr. Griffis,

> "...is very concerned about this type of literature in the mails and offers his assistance and cooperation in trying to rid the mails of it."

And this is very obviously the attitude of the Post Office.

b) There may be community pressure, pressure by Post Office officials, or even by the local Postmaster or postman to attempt to make out a violation of a prohibitory order in order to cause more trouble for the mailer, in this emotionally-charged situation. The defendant is precluded from obtaining an examination of the complaining addressee in order to determine this, and there is simply no way in which the defendant can ever obtain such information. But this has happened. Graphic and dramatic proof of this -- of a direct Post Office attempt to influence an addressee to set forth a false date of receipt of mail so as to be able to find a violation of a prohibitory order, -- was accidentally uncovered during a hearing in another case involving this very defendant.

AFFIDAVIT OF HERBERT MONTE LEVY

Thus, in the Post Office case entitled "In the Matter of: Violation of Prohibitory Order No. 633, issued against Pent-R Books, Inc., Respondent, on behalf of Thelma M. Moser, Complaining Addressee, by Postmaster, Phoenix, Arizona," Post Office Docket # R14-Pa64-633, Gary Langer, Esq., then of my office, at the Post Office hearing, asked to look at the original folder. Upon it being examined, Mr. Langer noted that in the file, there was a card, obviously prepared by the Post Office, the bottom of which purported to show the date of receipt reading:

> "On August 27, 1969, I, Thelma Moser, received from the Pent R Book (sic) a second letter",

apparently signed by Thelma Moser. But immediately preceding this legend, also obviously prepared by the Post Office -- which had failed, however, to cut it off -- appeared the following:

> "In order to make a case against this firm we must have signed statement as to date of delivery of the second letter. The date given is an estimated date, but will give us the correct waiting period to carry on this complaint. An envelope is supplied for your convenience and no postage is necessary."

A Xerox copy of the card is being filed with this Court in United States v. Pent-R Books, Inc., 69 C 1362.

AFFIDAVIT OF HERBERT MONTE LEVY

That this came from the Post Office is quite clear -- no one else would or could have given this "information" and supplied a postage-free envelope. The Post Office's clear motive was "to make a case against this firm (defendant)", and the date given was an estimated date, obviously "estimated" by the Post Office in order to give them "the correct waiting period to carry on this complaint." Thus, the alleged date of receipt of the second mailing in that case was a totally fictitious date that the Post Office itself "estimated" in order to show a violation. (How could the Post Office make an estimation of that which was not within its own knowledge?) It will be noted that the alleged date of receipt, August 27, 1969, was completely typed in on the same typewriter which had written the instructions, and was obviously not done by Thelma Moser. Filed in 69 C 1362 will be a photocopy of the transcript of the stenographic minutes of the Post Office hearing on this matter.

In the complete absence of any opportunity to cross examine Thelma Moser, or the Postal officials involved -- an opportunity constantly requested by us, but always denied in each and every case, -- the defendant is simply at the mercy of the Post Office, when the Post Office thus unilaterally

decrees the alleged date of receipt of the second mailing, to get a correct waiting period to carry on its complaint. The Post Office obviously picks a date convenient to show, in their legal judgment, a violation. How widespread this practice has been by the Post Office, it is impossible to determine. (We should also note that the Post Office has consistently taken the position that receipt of a second mailing more than 30 days after receipt of the prohibitory order presumptively establishes a violation; though this position is incorrect, it explains why the Post Office does not always suggest a date of receipt of the second mailing more than 60 days later.)

Of course, this shows that when the Government seeks equity here, it does not come into Court with clean hands. Its hands are despicably defiled by its covert attempt to frame the defendant in the Moser case, an attempt disclosed only through its carelessness in not cutting off the top of the card in this instance. While this is not one of the cases presently pending in which summary judgment is sought, the simple fact is that there is no investigatory tool whatsoever by which we can ascertain how widespread

AFFIDAVIT OF HERBERT MONTE LEVY

this practice is and was. Denied the right to confront and examine a complaining addressee, which we contend is a denial of liberty and property under the due process clause of the Fifth Amendment and the denial of the right to cross examine and confront defendant's accusers under the Sixth Amendment, but with the proof of at least one attempted frame-up, we submit that the Government must either submit all of its complaining addressees and Postal Officials to confrontation and cross examination, or that equitable relief should be denied by the Court.

In my affidavit, I note that the Post Office hearing examiner sits as the witness, judge, and jury. An examination of the transcript of the minutes in the Moser case shows the vice of such multiple roles being combined in one person. The hearing officer was David S. Kelson, Esq., an attorney for whom I have the greatest respect and admiration. Yet even Mr. Kelson, when faced with indubitable proof of the Post Office framing a defendant, rose to the defense of his employer, the Post Office. It is, under the circumstances, a severe denial of due process to permit the same person to be witness, judge and jury, especially when he is employed, as here, by the same Department which makes the accusation of violation.

Thus, whatever exception there might be based upon inherent reliability of business entry records is totally lacking in this case. In this day of revelation after revelation of improper conduct on the part of highest Government officials, and with at least one Postmaster having been found out to attempt to obtain false statements as to date of receipts of second mailings, it would simply ludicrous to hold that there was any inherent reliability in the alleged statement by an addressee of the date of receipt of the second mailing.

The alleged receipt purporting to show the date of receipt, purportedly signed by the complaining addressee, does not clearly show the date it was received. It merely recites "received," or a word or words to such effect. The next line sets forth the name of the addressee. This may well show the date the Post Office received the material from the complaining addressee, rather than the date that the complaining addressee received the second mailing from the defendant. It certainly is not proof that this was the date of receipt by the complaining addressee of the defendant's second alleged mailing.

AFFIDAVIT OF HERBERT MONTE LEVY

The writings purporting to indicate receipt by the signatory contain what are apparently two different handwritings, one handwriting showing the alleged date of receipt, and one showing the signature underneath. Since these are in apparently two different handwritings, it is impossible to tell whether or not the date of receipt was perhaps inserted by the Post Office, rather than by the addressee himself. It may be that a trial would disclose this, with an opportunity to examine the complaining addressee, and hence summary judgment should be denied to the Government.

The proof of date of receipt of the second alleged mailing merely purports to show the date upon which it was received -- but in no way, shape or form does it set forth by whom it was received on such date. It could mean received by the Post Office, it could mean received by anyone, and there is simply no signature to even vouch for such a date of receipt --- even by the Post Office.

AFFIDAVIT OF HERBERT MONTE LEVY

While the law as quoted in the Government brief now permits a complaint to be issued by the Postal Service, it is nonetheless true that the statute as it existed at the time of the issuance of the complaint in the case at bar required that the complaint be issued by the Postmaster General.

On the contrary, the complaint was issued by a local Postmaster.

There has been neither showing nor claim that there was any statutory authority -- palpably lacking -- for the delegation by the Postmaster General to such person, an authority which would seem to be singularly lacking, in view of the fact that recommendation has been made to the Attorney General to seek a Court order upon the say-so not of the Postmaster General, a Cabinet officer, but on the say-so of a minor functionary. If there be such a delegation of authority, we are unaware of it, and further unaware of any statutory or other basis for such delegation.

Finally, we note that the prohibitory order and the complaint issued out of the Post Office not at Sioux City, Iowa , the address to which the first mailing was made, but out of Des Moines, Iowa .

AFFIDAVIT OF HERBERT MONTE LEVY

We submit that the Postmaster at the latter city has no jurisdiction over mailings to the former city.

This affidavit has been particularly directed towards the particular facts in this case. We also submit herewith an affidavit by Richard S. Schwartz, which will be filed in every one of the presently pending Pent-R cases, which attacks the proposed relief requested by the Government on numerous other grounds, common to all of the cases pending in this Court, against this defendant.

For the reasons stated in this affidavit, as well as for the reasons set forth in Mr. Schwartz' more generic affidavit, we submit that the Government's motion for summary judgment should be in all respects denied, and that our cross motion for summary judgment should be in all respects granted.

Sworn to before me this
6th day of November, 1973

HERBERT MONTE LEVY

GILSOM SAFDEYE
Notary Public, State of New York
No. 3425478
Qualified in Kings County
Commission Expires March 30, 19 75

AFFIDAVIT OF RICHARD S. SCHWARTZ IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.

Defendant.
----------x

ANSWERING AFFIDAVIT OF RICHARD S. SCHWARTZ.

Docket #

72 C 602

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

RICHARD S. SCHWARTZ, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the Secretary of defendant PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. as well as of RAS ENTERPRISES, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment herein, and in support of defendant's cross-motion for summary judgment. I am fully and personally familiar with all the facts set forth herein.

AFFIDAVIT OF RICHARD S. SCHWARTZ

EXTRAORDINARY PRECAUTIONS TAKEN BY DEFENDANT TO AVOID OFFENDING RECIPIENTS OF ITS MAIL.

Upon the outside of all mailing envelopes sent by defendant, or upon the outside of an inner sealed envelope, there had always appeared a notice advising the recipient of the nature and content of the advertisement contained therein.* If the recipient did not want this material, he merely marked the envelope "Refused", as invited to by defendant, initialed it, and returned it to the postman or dropped it into a mail box which he was sure to pass sometime during the day, all at defendant's expense, after which defendant removed the addressee's name from its mailing list.

Defendant had thus avoided the necessity of an addressee viewing materials which he preferred not to be exposed to, unlike the requirements of the Pandering Law where, if the complaining addressee is to be at all honest, he must open and view the materials. We had also avoided the time

* This practice ceased in 1970, when the Goldwater Amendment to the Postal Reorganization Act of 1970 required the legend "Sexually Oriented Ad" to appear on the envelope or on an inner sealed envelope. Defendant then followed that law. See Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp.297 (E.D. N.Y. 1971).

consuming necessities inherent in the addressee obtaining the Prohibitory Order and following through for a complaint. We emphasize that defendant had always done this -- starting long before the effective date of the Pandering Law.

Defendant has thus always been extremely careful of the sensibilities of persons who might otherwise be offended. Incidentally, lest the Court think that the more than 200,000 prohibitory orders that have been received by the defendant seem excessive, we note that defendant has mailed perhaps more than 10,000,000 advertising pieces, and thus the percentage of prohibitory orders received by it from all its mailings is some 2%. And though some 200,000 people purportedly objected to our ads, more than 450,000 copies of the book advertised have been sold. We further note that the advertisements, involved herein, for "The Photographic Manual of Sexual Intercourse", have been ruled non-obscene and constitutionally protected by Judge Masterson of the U. S. District Court for the Eastern District of Pennsylvania, United States v. Stewart, unreported, Crim. No. 69-162,

Order dated October 13, 1971. Under these circumstances, we note that if 39 U.S.C. §4009 or its successor be applied to the defendant, who is shown here to be engaged solely in publishing, selling and distributing materials protected by the First Amendment, with a warning notice described above, such application is unreasonable, arbitrary and capricious, repugnant to the due process of law clause of the Fifth Amendment and to the First Amendment, and deprives defendant of liberty and property without due process of law and constitutes an unreasonable, capricious and arbitrary restraint on First Amendment rights, especially in view of the severe limitations on First Amendment rights necessarily encompassed in any attempt to avoid a conflict with 39 U.S.C. §4009 -- as we shall show below. For the price of compliance with §4009, as we note below, is that many mailings cannot be made to persons who wish to receive such mailings, and therefore the statute prevents mailings to persons who desire to receive them, thus interfering with their -- and defendant's -- First Amendment rights -- a possibility never considered by

the Supreme Court of the United States in Rowan, a case which was instituted in the early days of the Pandering Law, without any opportunity whatsoever for the Supreme Court of the United States to have any but the sketchiest information on how the law worked out in practice.

SINCE THE DEFENDANT HAS NEVER WILLFULLY VIOLATED A PROHIBITORY ORDER, AND SINCE THE DEFENDANT HAS TAKEN ALL POSSIBLE PRECAUTIONS TO AVOID SECOND MAILINGS, INCLUDING DEPRIVING PERSONS WHO WISH TO RECEIVE ITS ADVERTISEMENTS OF THE RIGHT TO DO SO, AND SINCE DEFENDANT NOT ONLY DOES NOT THREATEN TO MAKE AN ADDITIONAL MAILING BUT HAS MADE IT VIRTUALLY HUMANLY IMPOSSIBLE TO DO SO, AN ORDER SHOULD NOT ISSUE ENFORCING THE PROHIBITORY ORDER.

The so-called Pandering Law went into effect on April 14, 1968. At that time, no one knew for certain what its operation and effect would be. But after more than 5 years of experience with this law, the defendant knows, and shall hereinafter demonstrate to this Court, that this law cannot be complied with except by disregard of defendant's own First Amendment rights -- which defendant has had to disregard in order not to be in conflict with the law.

We thus claim that the law, so construed and applied, in its operation and effect, does violate the First Amendment.

At no point whatsoever did defendant ever willfully make a second mailing in violation of a prohibitory order; at the present time, and for at least the last three years, because of the computerization that the defendant has used, we submit that not only does defendant have no intent of violating the prohibitory order here, but it could not do so even if it wished. It is our contention that in the complete absence of any willfulness in the second alleged mailing, plus the fact that there cannot be a willful mailing hereafter, an order of this Court should not issue.

As we shall show in some detail at length below, there is no doubt of defendant's good faith and diligence in attempting to comply with the Pandering Law. The cases involved here all deal with second alleged mailings in 1969, in which year Pent-R made about 10,000,000 mailings. But long prior to the 1968 effective date of the Pandering Law, we had set up a computerized system, solely in order to be able

to completely comply with the terms of the law. That system was set up by the President of defendant, Ronald A. Stewart, with my assistance, through arrangements made with a computer house and a system was devised as shall be set forth below. The cost of running that computer operation in the year 1969 was some $62,068. We are advised by the computer house, that it now estimates that it used the services of the equivalent of 25 people working full time for 6 months -- which it computes as the equivalent of one person working 3000 days, or 24,000 man hours -- in order to set up and process the system. As we note at length below, difficulties were encountered because of the use of rented lists, and rented lists were finally abandoned unless they were on computer tape, where the computer could prevent second mailings. The computer operation became more and more refined as we had more experience with it. The use of duplicate mailing labels was eliminated in 1970, when it was found that this resulted in violations of prohibitory orders. The system itself was finally programmed in 1971, and is still carefully programmed, to guard against second mailiings

to such an extent that the computer eliminates even mailings that have not been prohibited. Thus, as we learned of mistakes which took place, we corrected them at once, and took vigorous steps to prevent recurrence of these mistakes or further mistakes in the future. The new system of control greatly improved the situation. It is and has been as nearly perfect as a system can be.

Even originally, as we first set up the computer programming, we had a great rate of success with it. Thus, although we received something more than 200,000 prohibitory orders, the complaints of violation which have so far been upheld by the Post Office -- which bends over backwards to be fair to itself, -- number only approximately 500. Thus, even giving the Post Office the benefit of every doubt, even now the Government charges that only some one quarter of one percent (0.025%) of the prohibitory orders issued to Pent-R were violated. Moreover, every time we have received a complaint from the Post Office, we have once more fed the name and address of the complaining addressee into the computer, so

that no further mailings would be made to such complaining addressees. We have fed these names and addresses into the computer for a third time upon receipt of a Complaint filed in this Court.

Even if an injunction were issued in this case, it would and could have no effect by way of insuring better compliance in the future. With all the efforts we have made, it would be unjust to us to do so, in view of our good faith, and not in the public interest.

Actually, our success ratio is even better than the figure of 1/4 of 1% violations -- or 99 3/4% compliance. Thus, we note the following: All mailings for defendant were handled by another corporation, RAS Enterprises, Inc., of which Mr. Stewart is again the President and I am again the Secretary, as here. The mailings made by RAS Enterprises, Inc. are almost all of a nature that some would undoubtedly find erotically arousing or sexually provocative, so that the mailings of virtually every other corporation which had been processed by RAS have resulted in prohibitory orders. However, though

we estimate that Pent-R, plus all the other corporations serviced by RAS (including RAS itself) have probably had approximately 248,500 prohibitory orders issued against them, there were only seven administrative complaints of violation issued in the first half of 1972, none in the second half of 1972, nor in the first 6 months of 1973. Since then, there have only been three administrative complaints, all issued against an affiliated division of RAS, Companion Products; no material whatsoever was furnished in regard to one of the complaints, so we are at a loss to know whether or not it was justified; in the two cases where some materials were annexed to the complaint, it is perfectly clear that the prohibitory order was not violated. Thus, though there are approximately some 248,500 prohibitory orders issued and outstanding against all such corporations, there have been only some 10 administrative complaints of violation between January 1, 1972 and date -- an alleged violation

rate of less than 0.004%*. Our computer house has estimated the expected rate of computer error to be 1/2 of 1%, so that it is plain that, by falling below this rate of error, defendand (and its computer house) have done a superlative job. There is simply nothing else that we can do, of which we are aware, to avoid offending against the statute. Our good faith effort to comply with the law is perfectly clear. I now detail the course of our computer campaign.

Of course, before the Pandering Law became effective in 1968, defendant had tooled up in order to be able to comply with it. It immediately, upon receiving its first prohibitory order, began to comply with the law, in the following way.

After a prohibitory order was obtained in the Post Office, it was opened by defendant, and dated with the date of receipt (subject, of course, to error -- a lot of them in the beginning, where we failed to put on the date of receipt).

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* This rate assumes that all ten administrative complaints were valid. Since we know that at least two of them were invalid, we have at most eight valid complaints, (only one of which was received after July 1, 1972); assuming the eight are all valid, the violation rate since January 1, 1972 is cut from 0.004% to 0.003%.

AFFIDAVIT OF RICHARD S. SCHWARTZ

A photocopy of each prohibitory order was made, which was sent to the computer house, or "Listing House", while defendant retained the original for its files. At the computer house, the names and addresses of persons to whom mailings should not be made, as they appeared in the ordering part of the prohibitory orders, were typed. These were then read by a device known as an optical scanner, whose function it is to translate the written material into electrical impulses which are put, and then stored upon, a magnetic tape, in a symbolic form. The Pent-R mailing list was put up on a tape itself. When a name appearing on a prohibitory order also appeared on a tape for the Pent-R mailing list, the matching of the two tapes would prevent that person's name from being printed out by the computer on the mailing list which the computer prints out. At the same time, these were sorted out by zip codes.

Two problems became apparent. The first problem was with rented lists. The mailing lists, owned by, sold to and rented to defendant were and are lists of names and addresses of intellectual, mature adults who had previously received

from others, similarly situated to the defendant, advertising or other materials similar to those disseminated by defendant. They were and are mailing lists of names of persons such as doctors, dentists, attorneys, accountants, druggists and other professional people, and owners or proprietors of various businesses thus assuring as much as possible that none of the addressees were or are minors. Because of their nature, many of such mailing lists owned by defendant, and those rented or purchased from others by defendant and others, overlap, and the names of the same persons frequently appear on both such lists.

In view of the many prohibitory orders received by the defendant, it was physically impossible to visually compare, by human vision, the names of addressees thereon with the names in any lists rented by the defendant, especially since the names on rented lists were usually listed in random rather than in alphabetical order. Since the use of an optical scanner and computer to eliminate names on a list involves the copying of the names (by their translation into symbols stored on the magnetic tape), and since the owner of the rented

list will not permit that list to be copied, the defendant found that it was impossible, simply impossible, for it -- or others -- to comply with a prohibitory order insofar as the use of a rented list is concerned.

Moreover, many mailing lists were not available for purchase, being available for rental only, no matter what the price. When a list is sold, the price is many times the rental charges. The operation and the effect of the statute has been that, after defendant learned that it could not comply with the law and also use a rented mailing list, the defendant was forced to abandon the use of most rental mailing lists. It could only use a rented mailing list if and when the owner of such list had himself put the list on magnetic tape, so that the computer could be used to check off the names of persons as to whom prohibitory orders were issued and outstanding. Thus, the defendant has been forced into the position where it can mail to persons on mailing lists, which are available for rental, only if and when such lists are on tape. The defendant has followed this practice since 1970. Defendant estimates that, because of this limitation, it and the corporation which processes its mailings, and which

now owns its mailing lists -- RAS ENTERPRISES, INC. -- have been deprived of the right to mail to somewheres between 5,000,000 and 10,000,000 persons. Even allowing for a 20% of overlap of names on mailing lists already used with those on such rented mailing lists, the operation and effect of the statute has been to prevent mailings for First Amendment materials to approximately 8,000,000 persons within the United States within the last three years.

Further, in this connection, we note that on occasion, the rented mailing lists would not be delivered to the defendant or its computer house, but the owner thereof would insist upon having names and addresses on such list printed or typed by itself or others and sent to separately owned letter shops or mailers where the material to be mailed is inserted in the envelopes, or is otherwise packaged, and mailed. We have included in our estimate above such mailing lists which also are obviously unavailable to the defendant, because of its effort to comply with the Pandering Law.

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We submit that the Pandering Law was not intended to apply to a second mailing made to a name on a list rented by the sender. If it was intended to so apply, then defendant, who had exercised the greatest care, would be deprived of liberty and property without the due process required by the Fifth Amendment, since the only way to avoid second mailings to a name on a rented list is by so limiting the use of rented lists as set forth above, and thus effectively restricting the freedom of speech and press of the defendant herein.

There was a second problem which became apparent. In order to print out an entire protester-free list, the list would have had to be printed out anew at least once every 30 days. This particular aspect of the matter itself would have cost at least a minimum of $18,000 per year. To circumvent this cost, three carbon copies of each print-out were acquired at the comparatively nominal costs of $2.00 per 1,000 names. If the mailing label on the second alleged mailing is identical to that on the first alleged mailing this occurred

because the mailing was made due to the second mailing having been made before a new protester-free list could be printed out, it being impossible and illogical to coordinate dates of mailing with the effective dates of prohibitory orders.

Accordingly, in order to comply with this unconstitutional provision of the law, the use of carbon copies of mailing labels was abandoned by defendant in 1970.* Thus, the law unreasonably and substantially illegally prohibited the use of the mails for First Amendment purposes.

A third problem which was run into was that the optical scanner cannot exercise any judgment. Thus, if the name appearing on the prohibitory order was R. A. Jones, but the mailing list contained the name of Richard A. Jones, the computer would simply not recognize the name.

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*Such use has recently been resumed, but only to the limited extent that carbon copies are made of names and addresses only of those who have bought from us, as to whom the Pandering Law does not apply, Cf. Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp. 297 (E.D.N.Y. 1971). And in any event we have finally worked out a method for their use anyhow, so as to still comply with prohibitory orders.

To avoid this problem, and similar problems, the only way to prevent second mailings was to so program the computer that all persons with the same last name at the same address should not get mail. This was done in 1970.

Of course, the slightest variation of an address would have rendered this an illusory protection; thus, if our attorney's wife Marilyn W. Levy, Esq., who at about that time had an address of 1133 Sixth Avenue, had appeared on a different mailing label as having an address of 1133 Avenue of the Americas, New York City -- the same actual address, but different to a computer -- a mailing to her could not have been prevented.

In the meanwhile, the Supreme Court of the United States had upheld the constitutionality of the Pandering Law though, as we noted, without any knowledge of the operation and effect of the law. The defendant, even though it had pioneered the way in presenting a method by which an unwilling recipient could get its name removed from its mailing list without any expense and minimal effort, had to even further circusmcribe its own First Amendment rights in order to even better comply with the law.

To even better comply with the law, an improvement was made on or about November 14, 1970. Under this new system, the computer sought out the first five letters of the last name of the addressee, and automatically removed from the mailing list the name of any person at the same address who has the same first five letters in his last name -- even if such other persons had requested mailings from the sender, and even if their first names were different and were in fact different people. Thus, if one Murray Schwartz at 295 Madison Avenue, New York City, had obtained a prohibitory order, the computer would have automatically prevented mailings to all persons at that address the first five letter of whose last name are SCHWA. Thus, in order to comply with the law, mailings to Irving H. Schwartz and Herman Schwartzman as well as to Schwartz, Schindler & Levy, all existing persons or firms at that address, would have been prevented.

Thereafter a still further improvement was made, effective in the Spring of 1971. This eliminated from the RAS mailing lists the names of all persons as to whom the following three factors also appeared in the Government list supplied under the Goldwater Amendment or in the names supplied by the Prohibitory Order:

A. The first five letters of the last name coincide.

B. The first three digits of the street address coincide, and

C. The zip codes coincide.

Thus, in addition to weeding out the names and addresses of the persons mentioned above, all persons within the zip code area (10017) whose last names began with SCHWA at any address in that zip code area which began with 29., would be eliminated from the RAS list. Thus, any Schwartz, Schwartzman, Schwartzberg, Schwarz, etc. at 295 East 42nd or 295 East 41st, etc., etc., would not receive mail, even though some of such persons might be customers.* The problem is also solved of preventing a mailing to say,1133 Avenue of the

* Our computer house has advised us that at Co-Op City, a gigantic housing development in New York City which our computer house programmed, there were last names duplicated in 35-40% of the cases. We note that should a Schwartz in Co-Op City obtain a prohibitory order, many hundred (possibly several hundred) other Schwartz's in Co-Op City could not get a mailing from us -- and that this would continue perpetually even after the one objecting Schwartz moved out.

Americas, when the address we were given was 1133 Sixth Avenue, since the numbers of the street address control. We have thus succeeded in avoiding the type of problem set forth in the annexed page from "Popular Photography."

Of course, there is still opportunity for error. A mistake may be made by the typist who types up the material for the optical scanner, in putting down the name and/or address; a mere speck of dust on a computer tape may prevent the elimination of one or many names. It is estimated that there will be a computer error factor of one half of one percent (0.5%) which cannot be eliminated. (The Government, indeed, has made many errors in the tapes it supplied RAS under the Goldwater Amendment).

I should perhaps also add that when we receive a complaint of a violation of a prohibitory order, we once again feed the name and address of the addressee into the computer, even though in almost all probability it is already on our tapes, and though the second mailing was due to matters beyond our control (e.g., the second mailing was to a new address when the Postal Service had only ordered cessation of mailing to an old address).

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That our program seems to be working is evident from the fact that in November, 1971, only four complaints were issued -- one of which seems to be explainable only by computer error, two of which were caused by Post Office error, and one of which cannot be explained because we have not been furnished with sufficient documentation, according to advice from Herbert Monte Levy, Esq., our attorney. In October, 1971, only one complaint was received. So, too in September, 1971.

Thus, all of the corporations having their mail processed by RAS Enterprises, Inc. including that of Pent-R Books, Inc., in order to comply with the law, have taken precautions which result in elimination of mailings even to persons who may desire such mailings. We would estimate that that would include some 50,000 persons.* Under such

* This does not take into account persons in the Armed Forces who may be deprived of mailings, it would seem that one person named "Smith" or "Jones", by obtaining a prohibitory order, would effectively preclude all persons with such a respective last name at such APO address from receiving any mail from us. We have no idea how many persons have the same APO address; we are thus unable to come up with a figure for this problem.

circumstances, in addition to the clear violation of its First Amendment rights, it is further clear that there would not or could not be any willful violation of a prohibitory order. Accordingly, it would seem that this case would be moot, because any judgment, when rendered, could not have any practical legal effect upon the then existing controversy. Indeed, there is simply no controversy here.

To further note the good faith of defendant, we note that, as already stated, Pent-R did attempt to comply with all prohibitory orders, constantly tightening its preventative measures designed to insure that mail would not reach those who did not want to receive its mail. Moreover, when the Goldwater Amendment came into operation, requiring that publishers disseminating sexually oriented advertisements must subscribe to a list of persons who did not want to receive such ads, defendant was the first -- and for a long time the only -- subscriber to that list, which subscription cost it

$10,000 a year.* While continuing to comply with that requirement, Pent-R tested the statute before a three Judge Federal Court; during the course of those proceedings, the Government constantly modified its regulations, under the Goldwater Amendment so that that case was rendered moot and dismissed. One of the modifications followed Pent-R's practice, begun long before the statute was enacted or became effective, of giving a warning notice of the type of contents on an inner sealed mailing envelope. Pent-R Books, et al v. U. S. Postal Service, 328 F.Supp. 297 (1971). To further put this matter

*In analyzing the first such list supplied by the Government, we ascertained that 621 names on that list of 31,604 names had bought sexually oriented materials from one of the plaintiffs there on one, two, three or four occassions previously. Thus, some 2% of those on the Government list are prior buyers. Since the Government list includes names of children, if we assume 2.5 children per adult name, then some 5% on that list were prior buyers from plaintiffs there. We cannot even estimate how many on that list were prior buyers from other sources of supply. This further demonstrates Mr. Levy's thesis that persons are pressured into acting to avoid the receipt of ads for sexually oriented materials.

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in context, we note that although some 200,000 prohibitory orders were issued against Pent-R, only approximately 750 complaints were ever made under the Pandering Law, according to the estimate of our attorney and the informal estimates of Postal Service officials - an alleged violation rate of 0.375% at most. Of the some 750 cases in which hearings were held, approximately 1/3 of these resulted in dismissal in the complaint, while approximately 500 of the cases so far have resulted in the complaint being upheld by the Post Office, with or without a hearing, or some alleged 1/4 of 1% (0.025%) of alleged violations.

The defendant is a thoroughly law abiding corporation. We would estimate that it has spent by this time at least some $300,000 in order to comply with the Pandering Law, as well to comply with the Goldwater Amendment. Its vast expenditures of money, made in an effort to comply with the law, show that it is not a law breaker, but a law observer. To issue an injunction in any case such as this, which has become completely moot by the use of such a computerized

method that not only are mailings to protesters avoided, but also mailings to persons who are not protesters, would be to have the Court issue a useless order -- and an unconstitutional one at that.

I understand that it is hornbook law that a statute must be construed so as to avoid raising questions of constitutionality. We believe that we have raised substantial questions as to constitutionality in the operation and effect of the Pandering Law -- not involved in the Rowan case --, which must be faced if this Court is to issue an order. Succinctly stated, it is a fact that the law cannot be complied with except by denying the defendant its right to communicate to those who would receive its communications, and the right of those who receive such communications to receive them. We submit that the law should be so construed in this case as to mean that there is complete mootness in the case at bar, in order to avoid the raising of these questions.

We have bent over backwards to make possible settlement with the Government. It has never suggested any deficiency in our computerized system for compliance with

prohibitory orders. It has never suggested any improvement. Since 1971, at least, it has been fully informed of our system's working. What more does the Government want from us? Our standard of attempted compliance, our actual rate of better than 99 3/4% compliance with prohibitory orders, speak for themselves. No injunction need be granted. It could have no possible effect whatsoever. Any practical suggestions for improvements in our computerization program will be gratefully accepted. Can we do more?

A comparison of the way in which the first mailing was addressed, that is, the physical set up thereof, to the way in which the second mailing was addressed, clearly demonstrates that the second mailing was to a name on a rented list. This is obvious because of the differences; had the second mailing been to the same mailing list as the first, the two mailings would have been identical, letter for letter, type style for type style. Since they are not so identical, it is plain that one of the mailings, probably the latter, was to a rented list. For the reasons we have set forth above, we do not believe that a prohibitory order can be violated,

AFFIDAVIT OF RICHARD S. SCHWARTZ

WHEREFORE, deponent prays that the plaintiff's motion for summary judgment be denied, that defendant be granted summary judgment dismissing the complaint, and that the prohibitory order be vacated.

RICHARD S. SCHWARTZ

Sworn to before me this
8th day of November, 1973.

GILSOM SAFDEYE
Notary Public, State of New York
No. 3425478
Qualified in Kings County
Commission Expires March 30, 1975

1424a EXHIBIT, ANNEXED TO DEFENDANT'S CROSS-MOTION.

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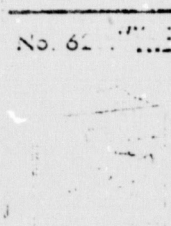

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NEWSFRONT *continued from page 14*

in convention here that Kodak is trial marketing three-solution process for color prints. It may replace present five-solution process. Kodak is concerned about water pollution and silver waste. New process "reduces effluent volume by 40 percent," has bleach-fix that is "completely biodegradable, can be regenerated and allows efficient silver recovery." Seiler said company is working hard to make non-toxic chemicals and cut level of BOD_5. He said Kodak has managed to formulate Ektaprint C stabilizer without zinc, another potential pollutant.

NEW YORK—*Our man Rothschild to speak at communication parley*: Among panelists at 15th annual Wilson Hicks International Conference on Communication Arts (formerly Miami Conference) will be *Popular Photography*'s senior editor, Norman Rothschild. Other participants at meeting, slated for April 28-30 at U. of Miami, Coral Gables, Fla., include Gilbert M. Grosvenor, editor and vice president of *National Geographic*; Erich Hartman of Magnum; Richard Grossman, president of Grossman Publishers; Tony Vaccaro of *Look*; Inge Morath, free-lance photographer and wife of playwright Arthur Miller; Burton McNeeley, undersea photographer, John Schearer, free-lance photographer; Larry Schiller, film maker; Paul Hue, photographer from Holland; Martin Dubey, manager of design and media for A.T.&T. Co.; Marcello Ablaza, official photographer to the president of the Phillippine; Dr. Wesley Clark, dean of the School Journalism, Syracuse University, and John Olson, staff photographer of *Life*. Conference also serves as annual meeting for American Society of Magazine Photographers.

NEW YORK—*With deep regret, we note the following deaths:*

Charles Rado, founder and president of Rapho Guillumette photo agency that represents photographers throughout the world. Rado often fostered work of unknown photographers, many of whom were exhibited at Museum of Modern Art.

Dr. Emanuel Goldberg, scientist, author, and retired director general of Zeiss Ikon AG. He emigrated from Paris to Israel, where he founded laboratory for applied optics, now known as EL-OP. He wrote *The Fundamentals of Reproduction Technique* and *The Structure of the Photographic Image*.

A. Aubrey Bodine, photo director of *The Baltimore Sunday Sun* magazine, and winner of hundreds of international photo awards. He had worked with *The Sun* papers for nearly 50 years. Many of his best pictures appeared in *My Maryland*.

Kyoichi Sawada, U.P.I. photographer, killed in Pnompenh, Cambodia, while covering the war. He won Pulitzer Prize in 1966 for picture of Vietnamese mother fleeing enemy attack.

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

AFFIDAVIT

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.
----------x

STATE OF NEW YORK)
:ss.:
COUNTY OF KINGS)

HYMAN GOLDMAN, being duly sworn, deposes and says that:

I am and at all times from 1968 to date have been employed by PENT-R BOOKS, INC., sued as PENT-R-BOOKS, INC. herein, as a messenger. Accordingly, I was the person who most often went to the Post Office to pick up registered mail, which was held for defendant at the Post Office Registry window. I have been asked to describe the way in which this was handled. I now do so.

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION

When I asked to sign a return receipt, it was not my practice to write down the date on the return receipt on which the material was received. This would usually be written, by stamp or otherwise, by the Post Office employee behind the Registry window. Sometimes this was done while I was waiting, at other times dates were stamped on some receipts after I had signed them, or while I was still signing other receipts. At still other times, the person behind the window would stamp the date of receipt, I assume, after I left, for such person had not stamped the receipts with the date prior to to my leaving.

I did not have an opportunity to always see what material I was getting before I signed for it. On numerous occasions, particularly when a lot of registered mail was received, -- as was the case in 1969 particularly --, I was on many occasions given a batch of return receipts to sign at the same time, or a manifest sheet listing numerous items. Only after I signed them would I then be given the materials that I had supposedly signed for. Thus, on

numerous occasions, I had no opportunity whatsoever to check to see whether all of the material for which I signed had been received.

There were of course many opportunitities for errors. Thus, the person behind the window could have put on the wrong date of receipt; I might not have been given a mailing piece for which I signed; I might have been given a mailing piece for which I signed one or more days after the date on which the receipt was supposedly stamped. And the opportunity for errors to be had was aggravated by the fact that, in 1969, there were frequent occasions when I had to sign for between 30 and 50 mailing pieces at the same time.

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION

Thus, the fact that a return receipt bears a particular date does not necessarily prove that it was received by Pent-R Books, Inc. on the date that the return receipt shows.

Hyman Goldman
HYMAN GOLDMAN

Sworn to before me
this 2nd day of November, 1973.

Gilsom Safdeye

GILSOM SAFDEYE
Notary Public, State New York
No. 3[illegible]
Qualified [illegible]ty
Commission Expires [illegible], 19 75

MEMORANDUM AND ORDER BY DOOLING, D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

: 72 C 602
(KELLY)

-against-

: MEMORANDUM
and
ORDER

PENT-R-BOOKS, INC.,

Defendant.

- -X

Appearances:

LLOYD H. BAKER, Esq. (DAVID G. TRAGER, Esq., United States Attorney, of Counsel) for Plaintiff

HERBERT MONTE LEVY, Esq., for Defendant

DOOLING, D. J.

In this action to obtain an order commanding compliance with a Post Office Prohibitory Order issued under 39 U.S.C. § 3008 (formerly § 4009), the plaintiff has moved for summary judgment on the administrative record, and defendant has cross-moved on affidavits. All objections of defendant in this action were raised and disposed of in 69 C 1362, and 72 C 609 , and what has been said in those dockets need not be repeated here. Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted and defendant's cross-motion is denied. A form of judgment has been approved for entry by the Clerk.

Brooklyn, New York
July 29, 1974.

U. S. D. J.

JUDGMENT.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

:

-against- : 72 C 602 (KELLY)

PENT-R-BOOKS, INC., : JUDGMENT

:

Defendant.

- -X

This action came on for hearing on the cross-motions of the parties for summary judgment before the Honorable John F. Dooling, Jr., District Judge, and the motion of plaintiff having been granted and that of defendant having been denied in the decision duly rendered, it is

ORDERED and ADJUDGED that defendant PENT-R-BROOKS, INC. its agents and assigns (1) refrain from any further mailings to ANNE J. KELLY, 3531 JACKSON STREET, SIOUX CITY, IOWA 51104,

or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder or resident; (2) immediately delete the above-named party from all mailing lists owned or controlled by it, its

JUDGMENT

agents or its assigns; and (3) immediately abstain from any sale, rental, exchange or other transaction involving mailing lists bearing the name of the party named above.

Brooklyn, New York

July 29, 1974.

Approved:

U. S. D. J.

CLERK

UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF NEW YORK.

----------X

UNITED STATES OF AMERICA,

Plaintiff,

v.

PENT-R-BOOKS, INC.,

Defendant.

----------X

CIVIL ACTION NO. 72C 603.

DOCKET ENTRIES

72C 303 U.S.A. v. PENT R BOOKS INC.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
/9/72	Complaint filed. Summons issued.	1JS5
25-72	Summons returned and filed. Deft srvd 5-25-72.	2
-27-73	Pltff's notice of motion ret 10-15-73 and memo in support of motion for summary judgment filed.	3/4
1-29-73	Notice of cross motion and memorandum in support of deft's cross motion for summary judgment filed.	5/6
-30-74	By DOOLING, J. - Memorandum & order dtd. 7-29-74 granting pltff's motion for summary judgment & denying deft's cross motion filed.	7
-30-74	JUDGMENT dtd. 7-29-74 ordering deft to refrain from further mailings to Bradley W. Day etc. filed. Copies to attys	
9-19-74	Notice of appeal filed. Duplicate mailed to C of A & pltff.	jn 9

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R BOOKS, INC.,

Defendant.

- X

COMPLAINT

Civil Action No.

Plaintiff, UNITED STATES OF AMERICA, by its attorney, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, complaining of the defendant, alleges:

1. This Court has jurisdiction of this action pursuant to Public Law 90-206, Sec. 301 and Title 28, U.S.C., Sec. 1345.

2. The defendant is a New York corporation having an office for the conduct of business at 203 Kings Highway, Brooklyn, New York.

3. On or about April 1, 1969, defendant mailed or caused to be mailed through the U. S. mail to Bradley W. Day, Trumbull, Connecticut (hereinafter referred to as "addressee") material offering for sale certain advertisement for Photographic Manual of Sexual Intercourse.

4. The said item was mailed from Brooklyn, New York, within the Eastern District of New York.

5. The above-described mailing consisted of photographic advertisements which the addressee believes to be erotically arousing or sexually provocative.

6. The addressee requested the Postmaster General to issue an order directing defendant, its agents or assigns, to refrain from further mailings of such material to him.

7. Upon receipt of this request and pursuant to Public Law 90-206, Sec. 301, on April 21, 1969, the local Postmaster, by order of the Postmaster General, issued Prohibitory Order No. 3-4233, which ordered and directed defendant, its agents and assigns, to delete his name from any sales or transactions involving lists bearing his name, effective 30 days after receipt of the order.

8. A copy of the order was mailed to defendant by registered mail on or about the date it bears.

9. Thereafter, the Postmaster General had reason to believe that defendant or someone acting on its behalf violated the order.

10. On or about June 5, 1969, in violation of Prohibitory Order No. 3-4233, defendant, or someone acting

on its behalf, mailed or caused to be mailed through the United States mail to the addressee, material such as that described in paragraph 3 of the complaint.

11. On June 27, 1969, the local Postmaster, by order of the Postmaster General, issued a complaint advising that evidence had been received that defendant, or someone acting on its behalf, had violated Prohibitory Order No. 3-4233, and advising defendant that any response for hearing had to be filed within 15 days.

12. A copy of the complaint was mailed to defendant by registered mail on or about the date it bears.

13. Defendant requested a hearing; a hearing was held, and a decision was rendered thereon.

14. On April 30, 1970, a determination was made that defendant or someone acting on its behalf had violated Prohibitory Order No. 3-4233.

15. A copy of the determination was mailed to defendant by registered mail on or about the date it bears.

16. The Postmaster General thereafter requested the Attorney General, pursuant to the provisions of Public Law 90-206, Sec. 301, to make application to a district court of the United States for an order directing defendant to comply with the order.

WHEREFORE, plaintiff, UNITED STATES OF AMERICA, prays:

a. That the court enter judgment herein requiring defendant, its agents and assigns, to comply with Prohibitory Order No. 3-4233, and more specifically, that this Court order and direct defendants, its agents and assigns, in conformity with this order to cease and desist from making any further mailings to the designated addressee from all mailing lists owned or controlled by defendant, its agents or assigns, and to refrain from selling, renting, exchanging, or engaging in any other transaction involving mailing lists bearing the name of said addressee.

b. That the Court grant to plaintiff such other and further relief as may be just and proper.

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By
Lloyd H. Baker
Assistant U. S. Attorney

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R-BOOKS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - X

NOTICE OF MOTION

72 C 603

PLEASE TAKE NOTICE that upon the annexed certified copy of the record of the proceeding in the Post Office Department, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a term for the hearing of motions to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, Courtroom 8, on the 15th day of October, 1973, at ~~9:15~~ 4:30 o'clock in the ~~forenoon~~ afternoon of that day, or as soon thereafter as counsel may be heard,

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

for an order pursuant to Rule 56 granting summary judgment to the plaintiff, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: Brooklyn, New York
September 26, 1973

ROBERT A. MORSE
United States Attorney
Attorney for the United States
of AMERICA

By:

_____
Lloyd H. Baker
Assistant U. S. Attorney

TO:
HERBERT MONTE LEVY, ESQ.
295 MADISON AVENUE
NEW YORK, NEW YORK 10017

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS.

[redacted]

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT

Washington, D.C. 20260

20 July 1970

CERTIFICATION

I hereby certify that the annexed documents constitute true copies of official records which are in the official custody of the Post Office Department, to wit: P. O. Docket No. BOS-H-69-79 (Bradley W. Day)

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, on the day and year first above written.

I. F. Kardos
Deputy Assistant General Counsel
Mailability Division

POD Form 2[illegible]
Mar. 1970

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

Violatio.	ory Order	
No. 3-4233	issued against	Docket No. BOS-H-69-79
Pont E Books, Inc.	Respondent	
On Behalf of Bradley W. Day	Complainant	

DECISION

A hearing on the question of the issuance of a complaint in the above-captioned docket number was held at New York, NY on December 11, 1969 by the undersigned.

At this hearing a stipulation was entered whereby the attorney for the respondent requested and was granted permission to file such affidavits as he felt necessary subsequent to the Hearing. This stipulation was filed with the Hearing Officer on April 2, 1970.

Based upon the evidence submitted, I hereby find as follows:

1. That on April 1, 1969, the respondent mailed to the complaining addressee Bradley W. Day a mailing piece containing an advertisement.

2. That on April12, 1969, the complaining addressee filed with the Postmaster, Hartford, CT a PCD Form 2150 stating that the advertisement was considered to be sexually provocative or erotically arousing, and requesting that a prohibitory order be issued.

3. That on April 21, 1969, a Prohibitory Order No. 3-4233 was issued by the Postmaster, Hartford, CT who was duly authorized and mailed by Registered Mail to the respondent who received it on April 22, 1969.

4. That said prohibitory order was to take effect on the 30th day after said receipt, and it ordered the respondent to refrain from further mailings to the named addressee.

5. That on June 5, 1969, thirty days having elapsed since the receipt of the prohibitory order, the addressee received a mailing piece mailed by the respondent and containing an advertisement essentially similar to the first advertise-

6. That on June 27, 1969, the Postmaster, Hartford, CT, being duly authorized, issued a complaint to the respondent. The said complaint formed the basis of this hearing.

Based on the above, I hereby decide that a violation of a duly issued prohibitory order did take place.

A consolidated decision dealing with all the objections made by counsel for the respondent is attached hereto and incorporated herewith.

To the extent that any motions are not covered by the above findings they are hereby denied.

The respondent is hereby notified that an appeal from this decision may be filed within 15 days of the date of issuance of this decision by filing a notice of appeal with supporting briefs with the Assistant General Counsel, Mailability Division, Post Office Department, Washington, DC 20260.

Issued this 30th day of April, 1970.

S/John T. Farrell, Jr.
Hearing Officer

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

In the Matter of)
)
Violations of Various Prohibitory Orders)
)
issued against)
)
Pent-R-Books, Inc. Respondent)
)
)
)
On Behalf of Various Complaining)
)
Addressees)

Consolidated Decision on Various Motions and Objections

Counsel for the respondent in a series of complaints for the violation of prohibitory orders in his original request for hearing, at the time of the hearings and in affidavits submitted subsequently, raised a series of objections. He has incorporated every objection into each case. This consolidated decision will be incorporated in and attached to the decision on the merits of each complaint in which a decision is rendered.

Each objection or motion is denied for the reasons set out below:

1. Objection to Regional Counsel sitting as hearing officer:

   The subject hearings are not governed by the provisions of the Administrative Procedure Act. This procedure is similar to the procedures used by many government agencies for the holding of preliminary hearings. Contrary to the contention of counsel for the respondent, the hearing officer does not act as an advocate, but rather makes a decision based upon the file submitted by the postmaster which, in effect, is a case stated and on such evidence is produced by the respondent.

2. Objection that the Postmaster General has not signed the prohibitory order and has not delegated the authority to issue a prohibitory order:

   At page 6068, Volume 33, Federal Register No. 77, Friday, April 19, 1968 contains a delegation from the Postmaster General to the General Counsel of the Post Office Department with an authority to redelegate. The General Counsel has redelegated the authority to issue prohibitory orders to postal service center postmasters by means of an administrative issuance.

3. Objection that a postmaster, even if authorized, has no authority to have other officials sign documents:

   The affixing of a signature is purely a ministerial act and does not alter the fact that the order or complaint was issued by the postmaster.

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

4. Objection that a postmaster has no authority to issue a prohibitory order for anyone but a patron of his post office:

Part 318.5 of the Postal Manual establishes Postal Services Centers and delegates the area that they would cover. In each of the complaints the prohibitory orders and complaints were issued by a postmaster of a postal services center for an area covered in the above-cited part.

5. Objection that the complaining addressee was not produced to testify in person:

The hearing officer was satisfied by the file in each case that complaining addressee had made a declaration that in the exercise of his or her discretion the advertisement complained of was erotically arousing or sexually provocative. The question of the exercise of the discretion is for the patron alone, and any questions tending to question that discretion would be irrelevant. In addition, the respondent was free to offer testimony from any witness he saw fit to bring to the hearing. It should be pointed out that the respondent at no time has presented live testimony.

6. Objection that the complaining addressee was not produced for the purpose of deposition prior to the hearing:

The answer to Objection No. 5 applies with equal force to this objection.

7. Objection that the complaint itself does not set forth a cause of action:

The complaint form refers specifically to the Statute 39 USC 4009 which specifically states what is a violation. It must be emphasized that the further mailings referred to in paragraph 1 of the complaint were made after the expiration of 30 days. Otherwise, the complaint form would be a nullity. There is a presumption of regularity of the acts of government officials and it cannot be assumed that the postmasters were performing vain acts.

8. Objection that the principles of Administrative Procedure Act should apply:

The statute in paragraph H specifically exempts these hearings from the provisions of the Administrative Procedure Act.

9. Objection that it is administratively difficult and costly to remove names from mailing lists:

The respondent is in the mail order business. The courts have held time and time again that there is no absolute right to mail anything to anyone at any time. The Congress

in exercising its constitutional duty and right having balanced the right of a citizen to prevent the further receipt of matter which the citizen, in his discretion, finds to be objectionable against the right to engage in the mail order business. The Congress specifically felt that the good to be obtained by the individual citizen outweighs the harm in the form of increased costs to the mailer. The hearing officer, for what it may be worth, finds that there is no right, constitutional or otherwise, to be a panderer.

10. Objection as to the constitutionality of the statute and the procedures evolved under the statute:

A three-judge court sitting in the Central District of California in the case of Rowan et al v United States discussed these constitutional objections and found both the statute and the procedures adopted under it not to be constitutionally objectionable. To the extent that a hearing officer, in these circumstances, has a right to consider objections to the constitutionality of the statute, it is found that this decision successfully disposes of all the constitutional objections.

John T. Farrell, Jr.
Hearing Officer

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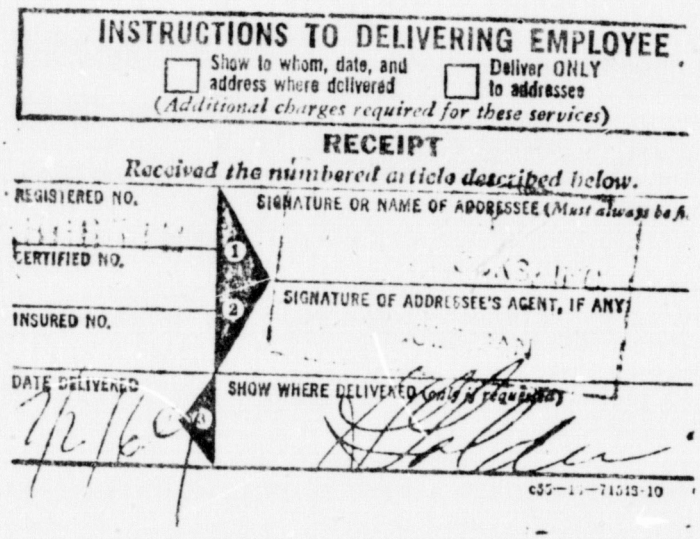


INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

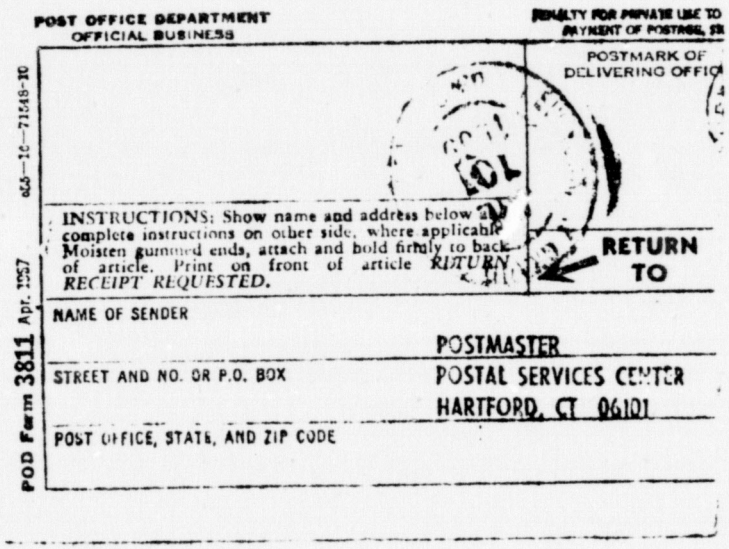
DATE DELIVERED

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be fi

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

SHOW WHERE DELIVERED (only if required)

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $3

POSTMARK OF DELIVERING OFFICE

INSTRUCTIONS: Show name and address below all complete instructions on other side, where applicable. Moisten gummed ends, attach and bold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

POSTMASTER
POSTAL SERVICES CENTER
HARTFORD, CT 06101

STREET AND NO. OR P.O. BOX

POST OFFICE, STATE, AND ZIP CODE

POD Form 3811 Apr. 1957

068—16—71648-16

1448a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS **Register 306512**

POST OFFICE DEPARTMENT

COMPLAINT

In the Matter of Violation of Prohibitory Order No. **3-4233**
Issued Against

Pent-R Books, Inc.

P. O. Box 1555
Grand Central Station

New York, NY 10017

and agents or assigns.

P. O. Docket No. **BOS-H-69-79**

On behalf of:
Bradley M. Day
Complaining Addressee

14 Hemlock Trail
Trumbull, CT 06611

On the **22nd** day of **April**, 19**69**, you received Prohibitory Order No. **3-4233**, copy of which is attached hereto, issued against you and your agents or assigns under authority of Title 39, U.S. Code, §4009, upon request of the above-named addressee.

Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:

1. By further mailings to the addressees listed in the order. See Exhibit attached hereto.
2. You failed to immediately delete from mailing lists owned or controlled by you or your agents or assigns the names of the addressees listed in the order. See Exhibit attached hereto.
3. ~~You ... sold, loaned, exchanged, or made other transactions involving ... addressees listed in the order. See Exhibit attached hereto.~~
4. ~~(Other grounds):~~

[Strike inapplicable items].

Any response to this Complaint or request for a hearing with respect thereto must be filed, in writing, in the Office of the Regional Counsel, Post Office Department, ~~(Address)~~ **with the undersigned Postmaster**, within fifteen (15) days after receipt of this Complaint. Attached hereto is copy of the Department's Rules of Practice relative to answering this Complaint and requesting a hearing in the matter.

[POSTMARK] HARTFORD JUN 27 196 CONN.

Dated: **June 27, 1969**

Postmaster

Hartford, CT 06101
City State ZIP Code

POD Form 2153
May 1968

1449a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
NOTICE FOR PROHIBITORY ORDER AGAINST SENDER OF PANDERING ADVERTISEMENT IN THE MAILS

I, BRADLEY W DAY (Print), addressee [parent of minor addressee] of the enclosed mailing from PENT-R BOOKS INC (Print), P.O. BOX 81 BROOKLYN, N.Y., 11223, consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, §4009, I request that the above-named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailings to me [as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday].

Bradley W Day — Signature
6/21/69 — Date
16 Hemlock TRAIL — Street
TRUMBULL, CONN — City, State
06611 — ZIP Code

2ND TIME IN FILLING OUT THIS FORM !! (FOR PENT-R BOOKS INC.)

NAMES OF CHILDREN	BIRTH DATE
N/A	

NOTE: This notice must be accompanied by the objectionable advertisement and the envelope, or other mailing wrapper, in which the advertisement was received.

POD Form 2150
May 1968

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

A BREAKTHROUGH IN SEX EDUCATION

No dolls, no drawings, no illustrations, no pencil sketches, no partially obscured over-printed photographs, no tracings where one sheet must be placed upon another, no men and women wearing skin tights, no tricks where men and women appear in the photographs seperately! Now, for educational purposes only, over 100 coital positions are clearly photographed for instruction purposes in over 150 large clear photographs of a real living nude man and a real living nude woman, a married couple, together engaged in sexual intercourse positions with accompanying descriptive text in the most sophisticated, modern and up-to-date sex manual ever published!

AVAILABLE FOR THE FIRST TIME TO THE ADULT GENERAL PUBLIC!

This brand new just published giant compendium of sex you will find one of the most informative, educational, instructive, eye-opening and mind clearing sexual manuals that you have ever seen or read. It offers the frankest, clearest, most detailed and explicit information through words and actual photographs on "HOW TO ENGAGE IN SEXUAL INTERCOURSE" that has probably ever been written! Over 100 coital positions are frankly described in plain language and photographed in over 150 FULL COLOR AND BLACK & WHITE DETAILED PHOTOS!

THERE HAS NEVER BEEN A BOOK LIKE THIS BEFORE!

Many will call "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" America's First Sex Course." Because for you and your wife, that is exactly what it can be. A step by step specific course in words and clear concise photographs of how to engage in the many forms of physical love and sexual intercourse! It can turn dull confused routine "quickie" sex into exciting sexual episodes which continue to improve each time and provide for greater degrees of pleasure and satisfaction then you or your wife ever thought possible!

Here at last are the techniques which can transform the staleness, routine and boredom of the marital act into a series of exciting refreshing, fulfilling experiences . . . each more thrilling than the last!

The Photographic Manual Of Sexual Intercourse will teach you step by step, in minute detail each touch, each movement, each kiss, each sensitive area of the body, each technique available to you for giving your mate and yourself new heights of sexual enjoyment and contentment. More in fact, than you ever thought possible!

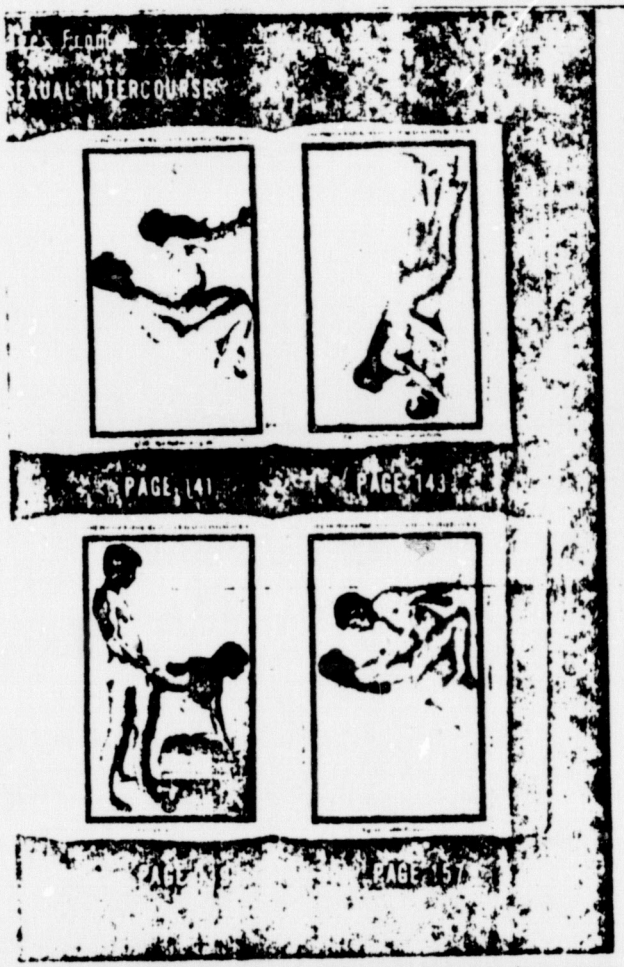
You'll learn from down to earth solid, truthful no punches pulled sex technique, fact filled over 150 clear educational Full Color and Black and White photographs the unusually helpful facts you should know about the many varied aspects of sexual intercourse.

OVER 150 FULL COLOR AND B SHOW YOU HOW TO BE A

Now for the first time in any book you can see with your own eyes, in large full color and black and white actual photographs the best positions to use for a wide variety of special purposes and sensual effects!

- **Discover the positions that narrows the vaginal opening, giving the man more stimulation!**
- **Learn the position that automatically forces the woman's thighs to add to penile stimulation!**
- **Discover the positions which most directly excite the clitoris!**
- **Find out what position holds the male organ after climax, preventing rapid contraction of the organ!**
- **Learn the position that allows the penis to penetrate to the neck of the uterus while at the same time providing even more sensation from the caressing touch of the scrotum moving upon the woman!**
- **Learn the position that holds a partial erection most**

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



**CK & WHITE PHOTOGRAPHS
ITER MARITAL PARTNER!**

Too many married couples are in the doldrums of on-again off-again "quickie" unembellished intercourse with no variations and no experimentations! This book will take you out of the sexual rut and into the sunshine of fresh new youthful exciting sexual activity!

**IMAGINE YOURSELF CONSISTENTLY
SATISFYING YOUR SEX PARTNER FAR BEYOND
HER-OR YOUR WILDEST EXPECTATIONS!**

Why not enjoy all the wholesome, healthy thoroughly satisfying sexual delights that are available to you and your sexual partner? It's all so easy and so natural provided you forget the prejudices and fallacies of the bygone eras and recognize the fact that just as there is more to life than eating and sleeping, so there is more to sex than mere "quickie" intercourse! And this is precisely the point this book brings home to you with absolute clarity, detail and the frankest most up-to-date and modern information that is available to the adult general public!

**THIS IS NOT A LONG-WINDED
BOOK OF DULL THEORY**

Each Photographic Manual of Sexual Intercourse" is packed with

THIS BOOK HAS ONE MAIN PURPOSE

This book has one main purpose, to teach you how to derive the utmost pleasure, excitement, sensation, ecstasy and satisfaction from sexual intercourse. It is definitely NOT written for persons seeking cheap thrills or those seeking to "ogle" at pictures of persons engaged in sexual intercourse!

WHAT THIS BOOK CAN DO FOR YOU

1) It can help you develop a healthy life-long attitude toward sex! This healthy attitude can improve your general health both mental and physical!
2) It can help you learn how to become a successful "lover-husband" and help you to achieve greater success and happiness in every aspect of your business and personal life!
3) It can help you learn how to experience maximum sexual satisfaction from the sex act.
4) It can help you learn how to correct any problem of sexual incompatibility in your marriage! You can learn what causes certain sexual problems and complications and how to avoid and deal with them.
5) It can help you learn the secret of enjoying sex-love happiness in the years ahead. How to keep the fire burning and how to keep your sex life from becoming dull and monotonous!

You can learn numerous ways to prolong the act of intercourse. You can learn how to help your wife to achieve a fuller orgasm. How to arouse her to new found passion and how she can learn to arouse you to a new vitalized sexual relationship. You and your wife can both learn through words and photographs what to do and what NOT to do to become a more accomplished lover and sex partner.

And Now, you can also learn with the aid of text and photographs, how to obtain complete sexual satisfaction even **WHEN INTERCOURSE IS NOT POSSIBLE!**

This is one of the very few books that offers to the general adult public complete detailed chapters on **"FEMALE ORAL-ANAL SEXUALITY"** . . . **"MALE ORAL-ANAL SEXUALITY"** . . . **"SATISFYING SUBSTITUTES FOR SEXUAL INTERCOURSE"** . . . **"SEXUAL INTERCOURSE FOR THE OLD, ILL AND HANDICAPPED"!**

Yes, this is practically a complete guide to a happier sex-love life for married couples! This is the **HOW-TO-DO-IT** book in the marriage and sexual arts! It makes most other text on the subject obsolete!

SEXUAL KNOWLEDGE IS SEXUAL POWER!

The vivid detailed photographs in this book show with utmost clarity how to adjust postures for the best possible matching of organs, how to make the sexual side of marriage more vibrant by introducing a variety of caresses and positions into the sexual act. Men and women with sexual knowledge are men and women with power to bring satisfaction and fulfillment to their love partners

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

READ WHAT OTHERS ARE SAYING ABOUT THIS BOOK

This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.E.

This is the first marriage manual I've seen that didn't beat around the bush." Mrs. W.R. New York City.

This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.K., Los Angeles, Calif.

I wish this book had been published 12 years ago when we were first married." Mr. & Mrs. A.S., New York City.

I only wish I had seen this book early in my married life. My marriage finally failed for just those reasons which are covered in chapter Seven of this book. If only I had known what this book now makes so clear." Divorcee who was asked to comment.

We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thanks very much." L.B. & C.K. Chicago, Ill.

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE!

TABLE OF CONTENTS

With the final chapter just complete a few short weeks ago, THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE is the latest, most up-to-date sex manual on the market. It is the sex book today which is presented to you; this is no compilation of recent wisdom. People change, even the techniques of sex change. This is today's guide to sexual intercourse written for today's people! We ask you to review the table of contents:

Preface
Chapter I ..... History of Sex
Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of Sex
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral-Anal Sexuality
Chapter IX ..... Male Oral-Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
Chapter XII ..... Sexual Intercourse During Menstration and Pregnancy
Chapter XIII ..... Satisfying Substitutes
Chapter XIV ..... Sexual Intercourse for the Old, Ill and Handicapped
Chapter XV ..... Compiling Your Own Handbook

We venture to suggest that very few other books offer the complete coverage of this single volume. The above table of contents but suggests the scope of what is offered. Each chapter is packed of clarity, of down to earth language which takes you directly to the heart of the matter. This book was not written for the professional, although we fully expect that many professionals will insist upon having a copy of this book in a prominent position on their bookshelves.

Those who are considering marriage will want a copy of this book. Those who are married and are just beginning to find a certain tedium in their connubial bed will want to seek here for the answers to their problems. Those who are ill, old, or crippled will realize that their sex life need not be the

OUR GUARANTEE

TRY IT . . . DON'T BUY IT . . With our money back offer! We have put a great deal of time, money and effort into this book. We have strong feelings about this book. We feel this book has long been needed in our society of sexual confusion and maladjustment. We feel this book will be of immense value to thousands of men and women. To convince you of our sincerity and of the faith we have in this marvelous book we make this simple, straightforward guarantee to you. Order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE." Read it. Have your wife read it. If after reading this book, you do not feel powerful in your knowledge of sex, if you and your partner are not enjoying new heights of sexual excitement and pleasure, simply return the book. Every penny of your purchase price will be immediately refunded. What could be fairer than that? You have nothing to lose but the few moments it takes to fill out and mail the enclosed order form. If sex is an important part of your life, you owe it to yourself and to your sex partner to take advantage of this pioneering book of sexual knowledge. Please act today! A postage paid reply envelope is enclosed for your convenience! And please remember, you are trying, not buying, because if you are dissatisfied for any reason, your money is returned without question or delay! Please order today! Both you and your wife will be glad that you did!

FIRST EDITION SPECIAL OFFER! Limited Time Only!

The regular price of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is $12.98. This is the price many book stores throughout the country and many mail order firms are selling this book for. To the people who were unable to take advantage of our special pre-publication $9.98 offer, we are making this "First Edition Special Offer" for a limited time only. You may purchase "The Photographic Manual Of Sexual Intercourse" with Handsome Kivar Binding for only $9.98 and save $3 for a limited time only. This special offer may not be repeated again! You may have one chance and one chance only to take advantage of this tremendous offer. Please order today! We have books in stock for immediate shipment. Our money back guarantee of course still applies!

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE ONLY $9.98

First Edition Special Offer Limited Time Only

- 256 Pages Printed On The Finest Heavy-Weight Pure White Bond And High Gloss Enameled Paper!
- Handsome Kivar Binding (Special Deluxe Binding Also Available)
- Over 150 Actual Photographs In Black & White And Full Color!
- 40 Full Page Photos & 16 Full Page - Full Color Photos!

YOU MUST BE OVER THE AGE OF 21 YEARS TO ORDER!
No Books Will Be Shipped To Unmarried Minors!

USE ENCLOSED ORDER FORM AND POSTAGE PAID ENVELOPE.
(C.O.D. Orders Accepted But Must Be Accompanied By A $2 Deposit.)

PLANET BOOKS, INC. P.O. BOX 1555
Grand Central Station, New York, N.Y. 10017

Gentlemen:

Please rush me in plain sealed wrapper _____ copies of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE".
[ ] Regular Edition: Handsome Kivar Binding $9.98
[ ] Deluxe Edition: Gold-Stamped Cassbourne Library Volume $12.98
[ ] I have enclosed $ ____ [ ] Cash [ ] Check [ ] Money Order
[ ] Please enclosed $2 Deposit. Please ship C.O.D.

I understand that if I am not completely satisfied I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

I hereby represent that I am over the age of 21 years and I have signed to that effect below:

Signature _____

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

Dear Sir,

No one is born with knowledge of how to engage in Sexual Intercourse! Hopefully it is not so!

The schools, up until at least very recently, have completely and purposely boycotted sex education. Ask a school principal or school board official and he will say, "We leave that instruction to parents." Ask a parent if he or she is teaching sex education to their children and you may hear . . . "Don't worry, she has time" . . . or . . . "He'll learn" or "Ask his father, that's his job!" And if the parents fail, where is sexual instruction and knowledge to be obtained? Would you say the school yard or hall, the street, the candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear a story of someones' sexual experience. Sneak a look at a few pornographic pictures. Listen to a few lines dropped in a motion picture. Listen to T.V. comedians' subtle jokes. And above all shall we allow our youth to hear every old-wives-tale, every untruth, every misconception, every fallacy. And then, shall we pat ourselves on the back . . . for we have protected morality? We have protected our society from information on sexual intercourse? Naturally, on the day our son or daughter is married, by some miraculous happening, they will leave the wedding ceremony with a complete, accurate broad knowledge of sex. No one stands to take credit for this knowledge. No one seems to know how our newly married couple has obtained sexual knowledge. (In fact, no one knows IF our newly married couple has obtained sexual knowledge.) Let us all hope that our mythical couple has a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something private, something personal, something one person does not quickly reveal to another. In far too many cases, a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is fantastic! Premarital pregnancy is at it's highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our movie theatres are showing lesbian and homosexual features to packed houses. DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL we ask again? We think yes, most definitely yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE REALLY NECESSARY?

We say yes . . . because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indespensible aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader, so that the reader may evaluate them and come to his or her own conclusions. We feel that to publish our book "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" without photographs would be a disservice to our readers and would confuse rather then enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It was not written for beginners or minors, though much of the information it contains would be found useful by an adult who has the responsibility of teaching the young or inexperienced. This book was designed to teach men and women, even with years of sexual experience, what they may have been doing wrong and what they could and should do to give their mate new sexual pleasure, complete sexual satisfaction and to inspire their mate to new love, devotion and happiness.

The following brochure will give you additional details on the contents of the book. We have also enclosed an order form for your convenience.

We suggest that you order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE", read it, show it to your doctor and if you decide that it does not deserve a permanent place on your bookshelf, simply return it for an immediate refund of your money. It's as simple as that. Our experience has shown us that if we offer a product of value and merit, we won't have many returns. You have absolutely nothing to lose and a great deal of knowledge and happiness to gain.

1454a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

FIRST CLASS
PERMIT No. 28005
BKLYN, N.Y.

BUSINESS REPLY MAIL

NO POSTAGE STAMP NEC[illegible]ARY IF MAILED IN THE UNITED STATES

POSTAGE WILL BE PAID BY

PENT-R BOOKS INC.

P.O. Box 1555,
Grand Central Station,
New York, N.Y. 10017

TRY IT! IF NOT DELIGHTED WITH OUR SPECIAL MONEY BACK GUARANTEE!

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

*FIRST EDITION SPECIAL OFFER - $9.98 (Limited Time Only)

Please check appropriate box!

☐ Please ship book and place my name on your mailing list.
☐ I am not ordering at this time but place my name on your mailing list.
☐ Remove my name from your mailing list.

Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

signature .....

120 E W CAY
15 HEMLOCK TRL
TRUMBULL CT 06611

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PENT-R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 10017

Gentlemen:

Please send me in plain sealed wrapper ____ copies of "The Photographic Manual Of Sexual Intercourse" at the First Edition Special price of only $9.98 per copy. I am over the age of 21 years and I have signed the statement on the left to that effect. I understand that if I am not completely satisfied, I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

☐ Regular Edition: Handsome Kivar Binding only $9.98
☐ Deluxe Edition: Gold-Stamped Casebound Library Volume only $12.98

☐ I have enclosed $ _____ ☐ Cash ☐ Check ☐ Money Order
☐ I have enclosed a $2 Deposit. Please ship C.O.D.

SAVE MONEY! Enclose full payment and save Postage and C.O.D. fees!!

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

1455a

PENT-R BOOKS INC.
P. O. BOX 81
BROOKLYN, N. Y. 11223

BROOKLYN N. Y.

FIRST CLASS U. S. POSTAGE PAID 6c Permit # 9546

HARTFORD JUN 24 1969 CONN.

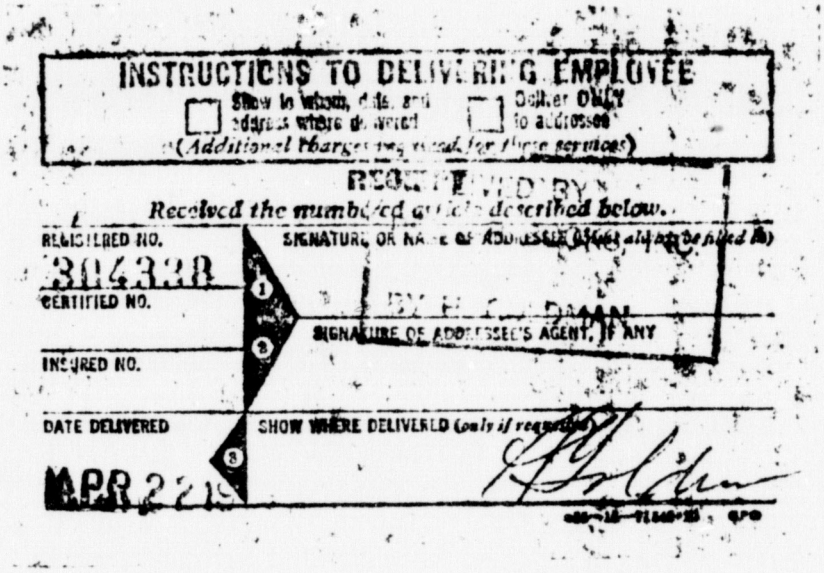
FIRST CLASS MAIL

PERSONAL

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRATED BROCHURE offering for sale to Adults Only, a new marriage manual. If you do not wish this mail or if you are not over the age of 21 years DO NOT OPEN THIS ENVELOPE! Simply mark this envelope "REFUSED", sign your initials and return it to your mailman. Upon the return of this envelope, we will endeavor to remove your name from our mailing list. Thank You.

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIVED BY

Received the numbered article described below.

REGISTERED NO. 304328

CERTIFIED NO.

INSURED NO.

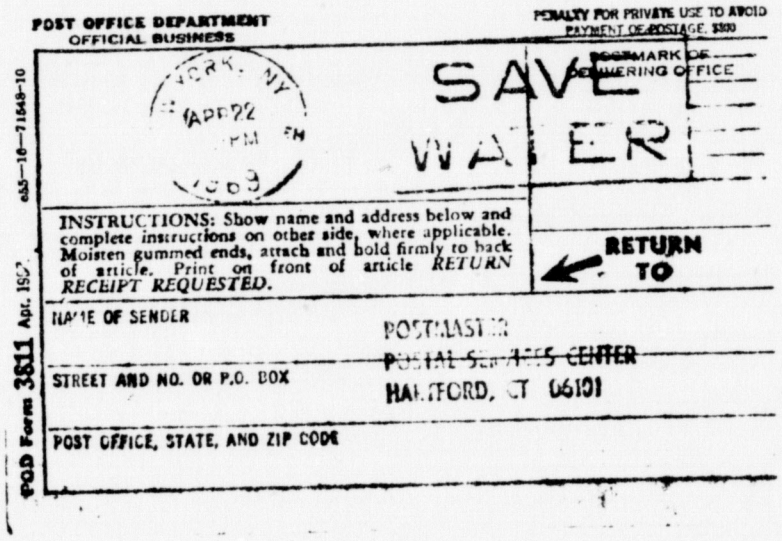
DATE DELIVERED APR 22 19

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

3 SHOW WHERE DELIVERED (only if requested)

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

SAVE WATER

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and bold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

POSTMASTER
POSTAL SERVICES CENTER
HARTFORD, CT 06101

STREET AND NO. OR P.O. BOX

POST OFFICE, STATE, AND ZIP CODE

POD Form 3811 Apr. 1967

655—10—71548-10

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
PROHIBITORY ORDER

In the Matter of

Register 304338

Pant-R Books, Inc.
P.O. Box 1555
Grand Central Station
New York, N. Y. 10017
Mailer
and agents or assigns

PROHIBITORY ORDER

NO. 3-4233

WHEREAS, we were furnished a mailing piece containing advertising matter which you mailed or caused to be mailed to

B W Day
(Name of Addressee)

68 16 Hemlock Trl 616
Trumbull CT 06611
(Address)

and

WHEREAS, said addressee has determined your advertisement to be a pandering advertisement offering for sale erotically arousing or sexually provocative matter; and

WHEREAS, said addressee has requested the issuance of an order pursuant to the provisions of Title 39, U.S. Code, §4009, a copy of which law is printed on the reverse side hereof, directing you and your agents or assigns, to refrain from making any further mailings to him [and his minor children residing with him who have not attained their nineteenth birthday].

NOW, THEREFORE, pursuant to the cited statute, you, your agents and assigns, are hereby ordered:

(1) To refrain from any further mailings to the following parties at the indicated address, or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder, resident, boxholder, postal patron, rural route boxholder, and local, effective on the 30th calendar day after receipt of this order:

Bradley F. Day

ADDRESS: 16 Hemlock Trail
(Street)

Trumbull *(State)* CT *(ZIP Code)* 06611

(2) To immediately delete the above-named parties from all mailing lists owned or controlled by you or your agents or assigns.

(3) To immediately abstain from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the parties mentioned above.

HARTFORD APR 21 1969 CONN.

[POSTMARK]

Postmaster

Dated: April 21, 1969

Hartford CT 06101
City State ZIP Code

Your Code 68 - 616

POD Form 2152
May 1968

"§4009. Prohibition of pandering advertisements in the mails

"(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postmaster General to refrain from further mailings of such materials to designated addressees thereof.

"(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postmaster General shall issue an order if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

"(c) The order of the Postmaster General shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after receipt of the order. The order of the Postmaster General shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

"(d) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, he shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for his belief and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

"(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punished by the court as contempt thereof.

"(f) Receipt of mail matter thirty days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

"(g) Upon request of any addressee, the order of the Postmaster General shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

"(h) The provisions of subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, United States Code, shall not apply to any provisions of this section.

"(i) For the purposes of this section—

"(1) mail matter, directed to a specific address covered in the order of the Postmaster General, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postmaster General's order; and

"(2) the term 'children' includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship."

(b) The table of contents of chapter 51 of title 39, United States Code, is amended by adding at the end thereof—

"4009. Prohibition of pandering advertisements in the mails."

SEC. 302. The provisions of this title shall become effective on the one hundred and twentieth day after the date of enactment of this Act.

Effective Date: 4-15-68.

1460a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
NOTICE FOR PROHIBITORY ORDER AGAINST SENDER OF PANDERING ADVERTISEMENT IN THE MAILS

I, Bradley W. DAY (Print), addressee [parent of minor addressee] of the enclosed mailing from ~~H. Hem~~ PENT-R Books, Inc. (Print)

P.O. Box 1225 Grand Central Sta. N.Y. NY 10017, consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, §4009, I request that the above-named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailings to me [as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday].

Bradley W Day (Signature) 4/12/69 (Date)

16 Hemlock Trail (Street)

Trumbull, Conn (City, State) 06611 (ZIP Code)

NAMES OF CHILDREN	BIRTH DATE
N/A	

NOTE: This notice must be accompanied by the objectionable advertisement and the envelope, or other mailing wrapper, in which the advertisement was received.

POD Form 2150
May 1968

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

A BREAKTHROUGH IN SEX EDUCATION

No dolls, no drawings, no illustrations, no pencil sketches, no partially obscured over-printed photographs, no tracings where one sheet must be placed upon another, no men and women wearing skin tights, no tricks where men and women appear in the photographs separately! Now, for educational purposes only, over 100 coital positions are clearly photographed for instruction purposes in over 150 large clear photographs of a real living nude man and a real living nude woman, a married couple, together engaged in sexual intercourse positions with accompanying descriptive text in the most sophisticated, modern and up-to date sex manual ever published!

AVAILABLE FOR THE FIRST TIME TO THE ADULT GENERAL PUBLIC!

This brand new just published giant compendium of sex you will find the most informative, educational, instructive, eye-opening and mind clearing sexual manual that you have ever seen or read, BAR NONE! It offers the frankest, clearest, most detailed and explicit information through words and actual photographs on "HOW TO ENGAGE IN SEXUAL INTERCOURSE" that has ever been written! Over 100 coital positions are frankly described in plain language and photographed in over 150 FULL COLOR AND BLACK AND WHITE DETAILED PHOTOS!

THERE HAS NEVER BEEN A BOOK LIKE THIS BEFORE!

Many will call "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" America's First Sex Course. Because for you and your wife, that is exactly what it can be. A step by step specific course in words and clear concise photographs of how to engage in the many forms of physical love and sexual intercourse that can turn dull, ordinary routine "quickie" sex into exciting sexual escapades which continue to improve each time and provide ever greater degrees of pleasure and satisfaction than you or your partner ever thought possible!

These at last, are the techniques which transform the drabness and boredom of the marital act into a series of sensuous, refreshing, fulfilling experiences [illegible] each more exciting than the last!

The Photographic Manual Of Sexual Intercourse will teach you the ultimate secret of every touch, every movement of your body, every sensitive area of the body, every technique you need to give your mate and your self new heights of pleasure and enjoyment and contentment. More in fact than you ever believed possible!

NOW! Learn from down to earth solid straight no punches pulled facts and figures and over 150 clear educational Full Color and Black and White photographs all that you will ever need to know about the most varied aspect of sexual intercourse!

OVER 150 FULL COLOR AND SHOW YOU HOW TO BE A

Now for the first time in any book you can see with your own eyes, in large full color and black and white actual photographs the best positions to use for a wide variety of special purposes and sensual effects!

- Discover the positions that narrows the vaginal opening, giving the man more stimulation!
- Learn the position that automatically forces the woman's thighs to add to penile stimulation!
- Discover the positions which most directly excite the clitoris!
- Find out what position holds the male organ after climax, preventing rapid contraction of the organ!
- Learn the position that allows the penis to penetrate to the neck of the uterus while at the same time providing even more sensation from the caressing touch of the scrotum moving upon the woman!
- Learn the position that holds a partial erection most firmly!

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

CK & WHITE PHOTOGRAPHS
TER MARITAL PARTNER!

Too many married couples are in the doldrums of once-again-or-never "quickie" unembellished intercourse with no variations and no experimentation! This book will take you out of the sexual rut and into the sunshine of fresh new youthful exciting sexual activity!

IMAGINE YOURSELF CONSISTENTLY
SATISFYING YOUR SEX PARTNER FAR BEYOND
HER-OR-YOUR WILDEST EXPECTATIONS!

Why not enjoy all the wholesome, healthy thoroughly satisfying sexual delights that are available to you and your sexual partner? It's all so easy and so natural provided you forget the prejudices and practices of the bygone eras and recognize the fact that just as there is more to life than eating and sleeping, so there is more to sex than mere "quickie" intercourse! And this is precisely the point this book brings home to you with absolute clarity, detail and the frankest most up to date and modern information that has ever been available to the adult general public!

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BOOK OF DULL THEORY!

This "Photographic Manual of Sexual Intercourse" is a clear, lively, down-to-earth, detailed "HOW TO DO IT" manual of step-by-step practical instruction. It tells you and shows you in words and

THIS BOOK
HAS
ONE MAIN PURPOSE!

This book has one main purpose, to teach you how t derive the utmost pleasure, excitement, sensatio ecstasy and satisfaction from sexual intercourse. It definitely NOT written for persons seeking cheap thril or those seeking to 'ogle" at pictures of persons engage in sexual intercourse!

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1) You will develop a healthy life-long attitude toward sex! Th healthy attitude will improve your general health both mentu and physical!
2) You will learn how to become a successful "lover-husband which will help you to achieve greater success and happines in every aspect of your business and personal life!
3) You will learn how to experience maximum sexual satisfac tion from the sex act.
4) You will learn how to correct any problem of sexua incompatibility in your marriage! You will learn what cause certain sexual problems and complications and how to avoi and deal with them.
5) You will learn the secret of enjoying sex-love happiness in th years ahead. How to keep the fire burning and how to kee your sex life from becoming dull and monotonous!

You will learn numerous ways to prolong the act of intercourse You will learn how to help your wife to achieve a fuller orgasm How to arouse her to new found passion and she will learn t arouse you to a new vitalized sexual relationship. You and you wife will both learn through words and photographs what to d and what NOT to do to become a more accomplished lover an sex partner.

And Now, you can also learn with the aid of text and photographs, how to obtain complete sexual satisfaction even WHEN INTERCOURSE IS NOT POSSIBLE!

This is the first time that a book has been offered to the genera adult public that offers complete detailed chapters on "FEMALE ORAL-ANAL SEXUALITY" . . . "MALE ORAL-ANAL SEXU ALITY" . . . "SATISFYING SUBSTITUTES FOR SEXUAL INTERCOURSE" . . . "SEXUAL INTERCOURSE FOR THE OLD, ILL AND HANDICAPPED"!

Yes, this is a complete guide to a happier sex-love life for married couples! This is the HOW-TO-DO-IT book in the marriage and sexual arts! It makes every other text on the subject obsolete!

SEXUAL KNOWLEDGE
IS SEXUAL POWER!

The vivid detailed photographs in this book show with utmost clarity how to adjust postures for the best possible matching of organs, how to make the sexual side of marriage more vibrant by introducing a variety of caresses and positions into the sexual act. Men and women with sexual knowledge are men and women with power to bring satisfaction and fulfillment to their love partners as well as to themselves. "The Photographic Manual Of Sexual

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WHAT OTHERS ARE SAYING ABOUT THIS BOOK

"This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.E.

"This is the first marriage manual I've seen that didn't beat around the bush." Mrs. W.R. New York City.

"This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.K., Los Angeles, Calif.

"I wish this book had been published 12 years ago when we were first married." Mr. & Mrs. A.S., New York City.

"I only wish I had seen this book early in my married life. My marriage finally failed for just those reasons which are covered in chapter Seven of this book. If only I had known what this book now makes so clear." Divorcee who was asked to comment.

"We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thanks very much." L.B. & C.K. Chicago, Ill.

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE!

TABLE OF CONTENTS

With the final chapter just complete a few short weeks ago, **THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE** is the latest, most up-to-date sex manual on the market. It is the sex manual today which is presented to you; this is no compilation of yesterday's sex lore. People change, even the techniques of sex change. This is today's guide to sexual intercourse written for today's people! We ask you to review the table of contents:

Preface
Chapter I ..... History of Sex
Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of Sex
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral-Anal Sexuality
Chapter IX ..... Male Oral-Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
Chapter XII ..... Sexual Intercourse During Menstration and Pregnancy
Chapter XIII ..... Satisfying Substitutes
Chapter XIV ..... Sexual Intercourse for the Old, Ill and Handicapped
Chapter XV ..... Compiling Your Own Handbook

We venture to suggest that no three books taken as one, offer the complete coverage of this single volume. The above table of content, but suggests the scope of what is offered. Each chapter is a model of clarity, of down-to-earth language which takes you instantly to the heart of the matter. This book was not written for the professional, although we fully expect that many professionals will insist upon having a copy of this book in a prominent position on their bookshelves.

Those who are considering marriage will want a copy of this book. Those who are married and are just beginning to find a certain tedium in their connubial bed will want to seek here for practical answers to their problem. Those who are ill, old or handicapped will realize that their sex life need not be the source [illegible] problem it [illegible]

OUR GUARANTEE

TRY IT . . . DON'T BUY IT . . . With our money back offer!

We, as the publisher, have put a great deal of time, money and effort into this book. We have strong feelings about this book. We feel this book has long been needed in our society of sexual confusion and maladjustment. We feel this book will be of immense value to thousands of men and women. To convince you of our sincerity and of the faith we have in this marvelous book, we make this simple, straightforward guarantee to you. Order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE." Read it. Have your wife read it. If after reading this book, you do not feel powerful in your new knowledge of sex, if you and your partner are not enjoying new heights of sexual excitement and pleasure, simply return the book. Every penny of your purchase price will be immediately refunded. What could be fairer than that? You have nothing to lose but the few moments it takes to fill out and mail the enclosed order form. If sex is an important part of your life, you owe it to yourself and to your sex partner to take advantage of this pioneering book of sexual knowledge. And only once will you have the opportunity to take advantage of this money saving pre-publication special offer. Please act today. A postage paid reply envelope is enclosed for your convenience! And please remember, you are trying, not buying, because if you are dissatisfied for any reason, your money is returned without question or delay! Please order today! Both you and your wife will be glad that you did!

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When it is published, **THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE** will sell for $12.98, and at that price it will be a fantastic bargain. But now, in a special pre-publication offer, you can purchase this first-of-a-kind book for only $9.98 and save $3 for a limited time only. This special pre-publication offer will not be repeated again. You have one chance and one chance only to take advantage of this tremendous offer.

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE!
ONLY $9.98
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YOU MUST BE OVER THE AGE OF 21 YEARS TO ORDER. No books will be shipped to unmarried minors.

USE ENCLOSED ORDER FORM AND POSTAGE PAID ENVELOPE.

PENTER BOOKS, INC. P.O. Box 1585
Grand Central Station New York, N.Y. 10017

Gentlemen:

Enclosed please find $ .....
[ ] Cash [ ] Check [ ] Money Order

Please rush me in plain sealed wrapper _____ copies of "The Photographic Manual Of Sexual Intercourse" at the special pre-publication price of $9.98.

I understand that I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

I hereby represent that I am over the age of 21 years and I have signed to that effect below:

.....
signature

Print Name _____

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NOW AVAILABLE FOR THE FIRST TIME ANYWHERE!

PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

AMERICA'S FIRST COMPLETE "SEX COURSE" IN ONE VOLUME!
NOW FOR THE FIRST TIME, THE MYSTERY OF SEX IS UNLOCKED THROUGH THE AID OF OVER 150 ACTUAL PHOTOGRAPHS OF A LIVE MAN AND A LIVE WOMAN TOGETHER ENGAGED IN SEXUAL INTERCOURSE POSITIONS!

PENT-R BOOKS INC

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL?

PENT R BOOKS INC. P.O. BOX 1555, GRAND CENTRAL STATION, NEW YORK, N.Y. 10017

Dear Sir:

No one is born with knowledge of how to engage in Sexual Intercourse! How then is one to learn?

The schools, up until at least very recently, have completely and purposely ignored sex education. Ask a school principal or school board official and he will say, "We leave that instruction to parents." Ask a parent if he or she is teaching sex education to their children and you may hear . . . "Don't worry, she has time" . . . or . . . "He'll learn" or "Ask his father, that's his job!" And if the parents fail, where is sexual instruction and knowledge to be obtained? Would you say the school yard or hall, the stoop, the candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear a story of someones' sexual experience. Sneak a look at a few pornographic pictures. Listen to a few lines dropped in a motion picture. Listen to T.V. comedians' subtle jokes. And above all shall we allow our youth to hear every old-wives-tale, every untruth, every misconception, every fallacy. And then, shall we pat ourselves on the back . . . for we have protected morality? We have protected our society from information on sexual intercourse? Naturally, on the day our son or daughter is married, by some miraculous happening, they will leave the wedding ceremony with a complete, accurate broad knowledge of sex. No one stands to take credit for this knowledge. No one seems to know how our newly married couple has obtained sexual knowledge. (In fact, no one knows IF our newly married couple has obtained sexual knowledge.) Let us all hope that our mythical couple has a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something private, something personal, something one person does not quickly reveal to another. In far too many cases, a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is fantastic! Premarital promiscuity is at it's highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our movie theatres are showing lesbian and homosexual features to packed houses. DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL, we ask again? We think yes, most definitely yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE REALLY NECESSARY?

We say yes! . . because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indispensible aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader, so that the reader may evaluate them and come to his or her own conclusions. We feel that to publish our book "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" without photographs would be a disservice to our readers and would confuse rather then enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It was not written for beginners or minors, though much of the information it contains would be found useful by an adult who has the responsibility of teaching the young or inexperienced. This book was designed to teach men and women, even with years of sexual experience, what they may have been doing wrong and what they could and should do to give their mate new sexual pleasures, complete sexual satisfaction and to inspire their mate to new love, devotion and happiness.

The following brochure will give you additional details on the contents of the book. We have also enclosed an order form for your convenience.

We suggest that you order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE", read it, show it to your doctor and if you decide that it does not deserve a permanent place on your bookshelf, simply return it for an immediate refund of your money. It's as simple as that. Our experience has shown us that if we offer a product of value and merit, we won't get many returns. You have absolutely nothing to lose and a great deal of knowledge and happiness to gain.

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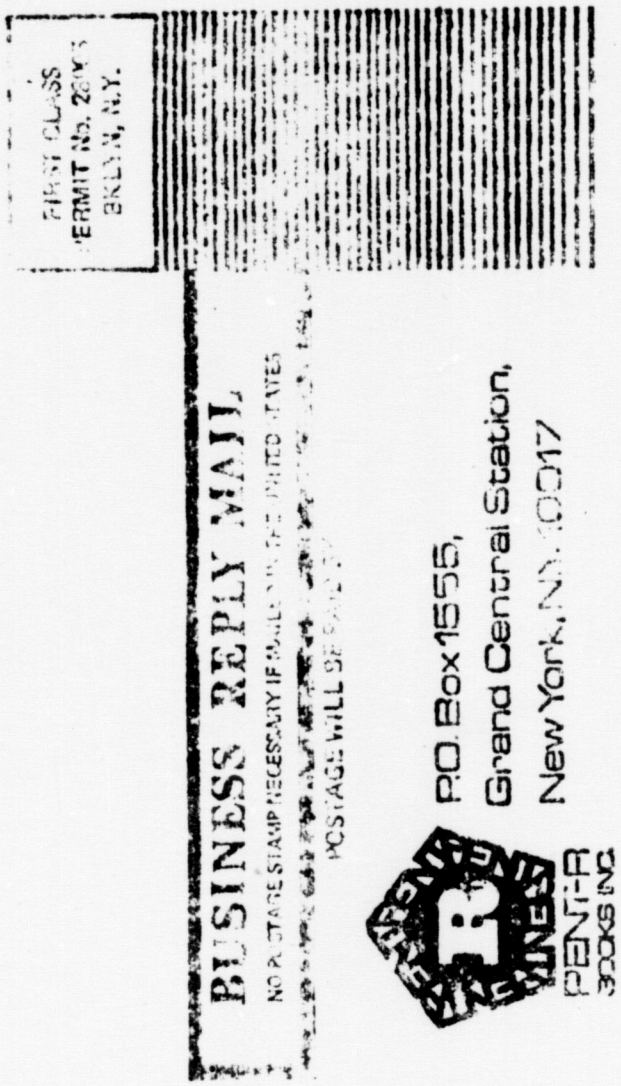

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*SPECIAL PRE PUBLICATION PRICE ONLY $9.98 (Limited Time Only)

Please check appropriate box!

_ Please ship book and place my name on your mailing list.

_ I am not ordering at this time but place my name on your mailing list.

_ Remove my name from your mailing list.

Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

signature .....

68 616

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PENT R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 10017

PENT-R BOOKS INC

Gentlemen

Enclosed please find $ .....

[ ] Cash [ ] Check [ ] Money Order

Please rush me in plain sealed wrapper_____ copies of "The Photographic Manual Of Sexual Intercourse" at the special pre-publication price of only $9.98 per copy. I am over the age of 21 years and I have signed the statement on the left to that effect. I understand that I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

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1466a

PENT-R BOOKS INC

P. O. BOX 81
BROOKLYN, N. Y. 11223

FIRST CLASS U.S. POSTAGE PAID 6c Permit # 9546

FIRST CLASS MAIL

PERSONAL

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRATED BROCHURE offering for sale to Adults Only, a new marriage manual. If you do not wish this mail or if you are not over the age of 21 years, DO NOT OPEN THIS ENVELOPE! Simply mark this envelope "REFUSED", sign your initials and return it to your mailman. Upon the return of this envelope, we will endeavor to remove your name from our mailing list. Thank You.

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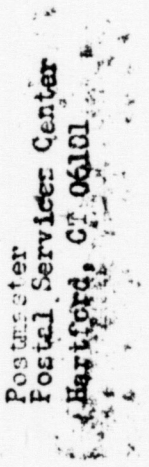

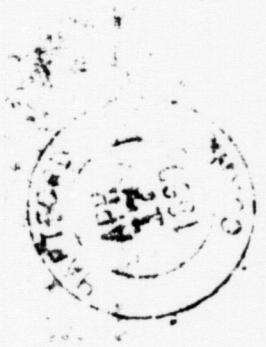

DEFENDANT'S NOTICE OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.
----------x

NOTICE OF CROSS MOTION.

Docket No.
72 C 603

The defendant upon the annexed affidavits, cross-moves the Court as follows:

1. To dismiss the action, without prejudice to restoring it to the calendar upon a further showing of a further alleged violation of the law, under the general principles of equity discretion.

2. To grant summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

3. To vacate the purported prohibitory order issued in this case.

DEFENDANT'S NOTICE OF CROSS-MOTION

4. To grant such other, further and different relief as to the Court may seem just and proper in the premises.

SIGNED:

Herbert Monte Levy

HERBERT MONTE LEVY
Attorney for Defendant
295 Madison Avenue
New York, New York 10017
689-2220

AFFIDAVIT OF HERBERT MONTE LEVY IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant,

----------x

ANSWERING AFFIDAVIT OF HERBERT MONTE LEVY, Esq.

Docket # 72 C 603

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

HERBERT MONTE LEVY, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the attorney for PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment, and in support of our cross-motion for summary judgment. I am personally and fully familiar with all the facts set forth herein.

At the outset, I note that this case is thoroughly moot, and that there is no case or controversy presently pending before this Court; any order entered by this Court

enforcing the prohibitory order (hereinafter sometimes PO) would be a useless order. As shown by the annexed affidavit of RICHARD S. SCHWARTZ, the defendant has taken every precaution humanly possible -- and more so -- using every possible available computer technology, to insure that second mailings are not made to persons in regard to whom PO's have been issued. Indeed, I myself have asked the Justice Department representatives whom I met with on this case on September 25, 1973 in Washington D.C. -- Messrs. Schiffer and Cogbil -- whether they had any suggestions as to how my client might take any better precaution to insure against violations, and they were silent on this score. Nor has the Assistant United States Attorney in charge of this case locally, Lloyd Baker, Esq., ever been able to suggest any additional precautions which my client should take.

Not only has my client taken every precaution to avoid the possibility of a second mailing, but my client's position, as stated in the annexed affidavit of Mr. Schwartz, is that it has no intention whatsoever of violating any PO, that under its existing computer technology it cannot violate the PO even if it wanted to; accordingly, there is not only no threat of violation of a PO, but no possibility

of violation of the PO (barring computer error). Certainly, a computer error could not be the basis for any finding of a contempt, nor could a human error, perhaps by feeding an erroneous entry into the computer, ever be deemed a contempt. Hence, since nothing can be accomplished by any order to be entered, and since there is neither threat nor possibility of an intentional violation of a Court order, there is no ground for equity to issue an injunction. Certainly, in its discretion, no injunction should issue. The case, too, is clearly moot, and we cannot see how there is any case or controversy within the meaning of the United States Constitution, which would give this Court jurisdiction.

Nonetheless, though we note this plea in bar because of lack of jurisdiction, because of lack of case or controversy, mootness, and no threat or intent by the defendant to act illegally, we now turn to other aspects of the matter.

The so-called Pandering Law, 39 U.S.C. Section 4009, gives complete discretion to the complaining addressee to determine whether the advertisement occasioning the Prohibitory Order (hereinafter sometimes "PO") is indeed a pandering advertisement. Of course, many complaining

addressees, whose libido is aroused by non-sexual materials or who are eager to shut off the mailed flow of advertisements, have certified that an advertisement is a pandering one, when to a more reasonable person it might appear that such an advertisement was not pandering, i.e., neither erotically arousing nor sexually provocative. Thus, according to the Report of the Commission on Obscenity and Pornography (Bantam Books Edition, 1970), at p. 133:

> "Prohibitory orders have been issued against nearly 400 separate business firm names mailing sexually oriented materials; orders were also issued against dozens of business firms advertising nonsexual products."

However, according to information we have received, the Government has not sought even one Court order to enforce a postal prohibitory order against any of the dozens of business firms advertising nonsexual products. It has sought Court orders only when the first mailing was -- in the judgment of the Post Office -- pandering, i.e.,of a sexually provocative or erotically arousing type. Thus, for example, I have received information, and therefore allege, that while prohibitory orders have been obtained against mailings made by such organizations as the American Civil Liberties Union and the Practicing Law Institute --

neither of which mail any material which could conceivably be called sexually provocative or erotically arousing -- the Post Office and its successor, the Postal Service, have completely failed to go into Court to seek a Court Order enforcing a PO, even when there has been a violation of the PO. We defy the Government to show otherwise.

Thus, the Government has been selectively determining in which cases it should seek a Court order. Since nothing can happen to a mailer unless and until he violates a Court order, it is quite clear that Post Office censorship is now being used in the place and stead of the discretion of the complaining addressee. Thus, the First Amendment is violated, because as construed and applied, and in its operation and effect, the law vests the plaintiff and the Attorney General with the power to make discretionary evaluations of material, and to determine which advertisers to move against, on the basis of the type of material advertised. The underlying statute is repugnant to the First Amendment and deprives defendant of its First Amendment rights, and is further repugnant to the due process clause of the Fifth Amendment, and further deprives defendant of liberty and property without the due process of

AFFIDAVIT OF HERBERT MONTE LEVY

law required by the Fifth Amendment, as well as depriving defendant of the equal protection of the laws under the said Fifth Amendment.

The administrative complaint issued by the Post Office did not state any cause of action, in that it failed to allege the date of the alleged second mailing, and in that it further failed to allege that such alleged mailing was made more than 30 days after the defendant's alleged receipt of the alleged PO.

As construed and applied, and in their force and effect, 39 U. S. C. Section 4009 and the Rules and Regulations promulgated thereto and thereunder, are repugnant to the due process of law clause of the Fifth Amendment and to the Sixth Amendment, and deprive defendant of liberty and property without said due process, and of its right under the Sixth Amendment to a trial by one who is impartial, to be informed of the nature and cause of the accusation, to confront and cross-examine the witnesses against it, and to have compulsory process for obtaining witnesses, the defendant not being given the "full hearing" afforded him according to the decision of the Supreme Court of the United States in Rowan v. United States Post Office Department, 397 U.S. 728 (1970), for the following reasons:

AFFIDAVIT OF HERBERT MONTE LEVY

In every Post Office hearing, the hearing officer--an employee of the Post Office which is bringing the complaint--has been the prosecutor, the judge, the jury, and, to the extent to which he has introduced in evidence varying papers, a witness. Wherever the Post Office has purportedly determined that defendant or someone acting in its behalf has violated a PO, such determination has been made without the testimony of any person whatsoever identifying any materials or the dates of their being received or sent, thus without any legal evidence whatsoever. Despite repeated demand made therefor by the defendant here, no complaining addressee has ever been produced at an administrative hearing, nor has any such person's testimony been permitted to be taken by deposition after due and proper requests therefor, the Post Office disregarding its own rules and regulations in regard thereto, and consistently failing to give any information whatsoever on how its own rules and regulations are being implemented. It is our understanding that the Post Office has never even inquired as to the willingness of the complaining addressee to appear and give testimony at a Post Office hearing. Thus, any mere indication by a complaining addressee, or any written (but invariably unsworn)

statement by the complaining addressee,as to the date of receipt of the second mailing, has been accepted as uncontrovertable Gospel truth by the Post Office, with no opportunity being given to the defendant to show error or hostility on the part of the complaining witness.

Insofar as the plaintiff may rely upon the presumption of 39 U. S. C. Section 4009(f), such presumption is arbitrary, capricious, unwarranted and unreasonable, especially in view of the notoriously poor mail service of the last several years.

Though the notice of motion recites that it is proceeding upon an annexed certified copy of the record of the proceedings in the Post Office Department, there is absolutely no copy of any certification whatsoever annexed to the papers that have been served upon defendant. Since no affidavit of any sort has been submitted with the Government's moving papers, there is thus simply no factual basis whatsoever upon which this Court can imply or find any fact whatsoever upon which to base the injunction that the Government seeks. Accordingly, this proceeding must be dismissed. However, on the bare possibility that there is a certification in existence and that an inadvertent clerical error

resulted in no copy of the certification being served with the motion papers (though this is unlikely, in view of the fact that amongst the numerous cases in which summary judgment papers were served upon defendant, there is frequently an absence of such certification), we nonetheless go on to note the following, in regard to the merits of the Government's application.

The Pandering Law, as it existed at the time of the alleged violation complained of here, did not require merely that a prohibitory order be issued as an order of the Post Office, or its present successor the Postal Service, but required that the prohibitory order be issued by the Postmaster General. In the case at bar, the prohibitory order was not issued by the Postmaster General.

In the case at bar, the prohibitory order was not issued by the Postmaster General, nor even by a local postmaster, nor even by an anonymous or identifiable individual. On the contrary, it was unsigned. Therefore, the original prohibitory was a complete nullity, and the entire proceeding must fall as being without a foundation, the Government's motion for summary judgment should be denied, and summary judgment should be granted to the defendant.

AFFIDAVIT OF HERBERT MONTE LEVY

The prohibitory order prohibited a mailing to (possibly among others) a person by the name of Bradley W. Day . However, the second alleged mailing was not to such person, but was addressed to a different name, to wit, B.W. Day , a person not named in the prohibitory order as one to whom a mailing was prohibited. Thus, there was clearly no violation of the prohibitory order.

The prohibitory order prohibited a mailing to a street address of 16 Hemlock Trl . However, the second alleged mailing was to a totally different street address, to wit, 16 Hemlock Trail . Thus, there was clearly no violation of the prohibitory order.

We turn next to the problem of whether, even assuming that the record is properly certified and that the so called evidence of date of receipt of the second mailing was admissible, -- both assumptions being purely for purposes of argument, -- a violation of the prohibitory order has been made out. We note, at the outset of this facet of the argument, that there is completely lacking any proof whatsoever of the date of the second mailing, that such date was never alleged,

and that therefore the defendant was never accorded due process of law under the Fifth Amendment and the right to know the nature and cause of the accusation against it under the Sixth Amendment. Just as significant, however, is the fact that the second mailing bears no postmark whatsoever. Thus, the Government is forced to rely upon the statutory presumption found in Section 4009 (f), that a mailing received more than 30 days after the effective date of prohibitory order is presumed to have been sent in violation of the order. But, as we show in our brief, the effective date of the order is 30 days after it has been received, so that there is no presumption of a violation unless the second alleged mailing was allegedly received 60 days or more after the date of receipt of the prohibitory order.

We come next to the question of admissibility of the evidence of the alleged date of receipt of the second alleged mailing. In view of the improper certification of the record, we do not see how such proof can be admissible in any event; it is completely unsworn to, and it is the rankest kind of hearsay. The Government, in its brief, has not attempted to sustain the admissibility

of this evidence. We expect, however, that the Government will urge that, assuming proper certification, it is admissible under the Federal Business Records Act (28 U. S. C. Section 1732 (a)) as a record kept in the ordinary course of business, it being the ordinary course of business to keep such records. However, as we show in our brief, since the business involved is that of the Post Office, and the entries as to alleged dates of receipt were made by third persons, not by the Post Office, such rule does not apply. Moreover, even if such a rule did apply, in a normal case, it would not be applicable here, for this reason:

The normal reason for permitting evidence of business records to be admitted is that such records are inherently reliable. But in a prohibitory order-pandering case, we submit, such evidence is inherently unreliable. For several reasons, as follows:

a) The type of person who goes to the time and trouble of going to the Post Office to obtain a prohibitory order rather than merely tear up the material which offends him, especially when -- as here -- he has been given notice of the contents of the envelope (see the right

AFFIDAVIT OF HERBERT MONTE LEVY

hand bottom of the mailing envelope), is obviously the type of person who is sorely offended by sexually oriented material, the type of person, indeed, who very well might, usually does, wish to see as much trouble caused to the mailer of such material as possible, even when, as here, the material involved has been held to be not obscene. This is graphically illustrated, despite all the hypocrisy of the Pandering Law, in the statement of one addressee, in the case purportedly pending in this Court of United States v. Pent-R Books,72 C 606, where the addressee noted as follows on the notice (request) for prohibitory order:

> "I request more than this (see below). This form evades the real issue. I have no minor children in my home, but YOU know this literature is reaching homes that have minor children. I AM NOT CONTENT WITH MERELY STOPPING THIS TYPE OF PORNOGRAPHIC MAIL FROM REACHING MY HOME; I EXPECT THE POST OFFICE AND JUSTICE DEPTS. TO FLUSH OUT THE SOURCE OF THIS OBSCENE MAIL, GET HIM OR THEM IN PRISON, AND STOP ANY OF THIS STUFF FROM BEING MAILED OUT AT ALL."

Similarly, in another purportedly pending case, in the memorandum from the Post Office Dept. dated June 3, 1969, the Postmaster recites that the complaining addressee, Mr. Griffis,

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> "...is very concerned about this type of literature in the mails and offers his assistance and cooperation in trying to rid the mails of it."

And this is very obviously the attitude of the Post Office.

b) There may be community pressure, pressure by Post Office officials, or even by the local Postmaster or postman to attempt to make out a violation of a prohibitory order in order to cause more trouble for the mailer, in this emotionally-charged situation. The defendant is precluded from obtaining an examination of the complaining addressee in order to determine this, and there is simply no way in which the defendant can ever obtain such information. But this has happened. Graphic and dramatic proof of this -- of a direct Post Office attempt to influence an addressee to set forth a false date of receipt of mail so as to be able to find a violation of a prohibitory order, -- was accidentally uncovered during a hearing in another case involving this very defendant.

Thus, in the Post Office case entitled "In the Matter of: Violation of Prohibitory Order No. 633, issued against Pent-R Books, Inc., Respondent, on behalf of Thelma M. Moser, Complaining Addressee, by Postmaster, Phoenix, Arizona," Post Office Docket # R14-Pa64-633, Gary Langer,

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Esq., then of my office, at the Post Office hearing, asked to look at the original folder. Upon it being examined, Mr. Langer noted that in the file, there was a card, obviously prepared by the Post Office, the bottom of which purported to show the date of receipt reading:

> "On August 27, 1969, I, Thelma Moser, received from the Pent R Book (sic) a second letter",

apparently signed by Thelma Moser. But immediately preceding this legend, also obviously prepared by the Post Office -- which had failed, however, to cut it off -- appeared the following:

> "In order to make a case against this firm we must have signed statement as to date of delivery of the second letter. The date given is an estimated date, but will give us the correct waiting period to carry on this complaint. An envelope is supplied for your convenience and no postage is necessary."

A Xerox copy of the card is being filed with this Court in United States v. Pent-R Books, Inc., 69 C 1362.

That this came from the Post Office is quite clear -- no one else would or could have given this "information" and supplied a postage-free envelope. The Post Office's clear motive was "to make a case against this firm (defendant)", and the date given was an estimated date, obviously "estimated" by the Post Office in order to give

them "the correct waiting period to carry on this complaint." Thus, the alleged date of receipt of the second mailing in that case was a totally fictitious date that the Post Office itself "estimated" in order to show a violation. (How could the Post Office make an estimation of that which was not within its own knowledge?) It will be noted that the alleged date of receipt, August 27, 1969, was completely typed in on the same typewriter which had written the instructions, and was obviously not done by Thelma Moser. Filed in 69 C 1362 will be a photocopy of the transcript of the stenographic minutes of the Post Office hearing on this matter.

In the complete absence of any opportunity to cross examine Thelma Moser, or the Postal officials involved -- an opportunity constantly requested by us, but always denied in each and every case, -- the defendant is simply at the mercy of the Post Office, when the Post Office thus unilaterally decrees the alleged date of receipt of the second mailing, to get a correct waiting period to carry on its complaint. The Post Office obviously picks a date convenient to show, in their legal judgment, a violation. How widespread this practice has been by the Post Office, it is impossible to determine. (We should also note that the Post Office has

consistently taken the position that receipt of a second mailing more than 30 days after receipt of the prohibitory order presumptively establishes a violation; though this position is incorrect, it explains why the Post Office does not always suggest a date of receipt of the second mailing more than 60 days later.)

Of course, this shows that when the Government seeks equity here, it does not come into Court with clean hands. Its hands are despicably defiled by its covert attempt to frame the defendant in the Moser case, an attempt disclosed only through its carelessness in not cutting off the top of the card in this instance. While this is not one of the cases presently pending in which summary judgment is sought, the simple fact is that there is no investigatory tool whatsoever by which we can ascertain how widespread this practice is and was. Denied the right to confront and examine a complaining addressee, which we contend is a denial of liberty and property under the due process clause of the Fifth Amendment and the denial of the right to cross examine and confront defendant's accusers under the Sixth Amendment, but with the proof of at least one attempted frame-up, we submit that the Government must either submit

all of its complaining addressees and Postal Officials to confrontation and cross examination, or that equitable relief should be denied by the Court.

In my affidavit, I note that the Post Office hearing examiner sits as the witness, judge, and jury. An examination of the transcript of the minutes in the Moser case shows the vice of such multiple roles being combined in one person. The hearing officer was David S. Kelson, Esq., an attorney for whom I have the greatest respect and admiration. Yet even Mr. Kelson, when faced with indubitable proof of the Post Office framing a defendant, rose to the defense of his employer, the Post Office. It is, under the circumstances, a severe denial of due process to permit the same person to be witness, judge and jury, especially when he is employed, as here, by the same Department which makes the accusation of violation.

Thus, whatever exception there might be based upon inherent reliability of business entry records is totally lacking in this case. In this day of revelation after revelation of improper conduct on the part of highest Government officials, and with at least one

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Postmaster having been found out to attempt to obtain false statements as to date of receipts of second mailings, it would simply ludicrous to hold that there was any inherent reliability in the alleged statement by an addressee of the date of receipt of the second mailing.

There is no showing whatsoever, and simply no indication whatsoever, of the date of receipt of the second mailing. Therefore, there is no showing whatsoever, of the alleged date of the second mailing, by presumption or otherwise, and summary judgment should be granted to the defendant, since Governmental proof of violation is completely lacking.

There is not a scintilla of evidence supporting the Hearing Officer's purported finding #5 that the addressee received the second mailing on June 5, 1969. All we know is that he purportedly signed a Notice on June 21, 1969. How much earlier then that he received the second mailing is unknown. The finding is made up out of whole cloth. See annexed copy of stenographic minutes of hearing.

While the law as quoted in the Government brief now permits a complaint to be issued by the Postal Service, it is nonetheless true that the

statute as it existed at the time of the issuance of the complaint in the case at bar required that the complaint be issued by the Postmaster General. So, too, with the order determining the violation. But in the case at bar, the Postmaster General did not issue the administrative order finding the violation, or any administrative order.

There has been neither showing nor claim that there was any statutory authority -- palpably lacking -- for the delegation by the Postmaster General to such person, an authority which would seem to be singularly lacking, in view of the fact that recommendation has been made to the Attorney General to seek a Court order upon the say-so not of the Postmaster General, a Cabinet officer, but on the say-so of a minor functionary. If there be such a delegation of authority, we are unaware of it, and further unaware of any statutory or other basis for such delegation.

Finally, we note that the prohibitory order and the complaint issued out of the Post Office not at Trumbull, Conn. , the address to which the first mailing was made, but out of Hartford, Conn. .
We submit that the Postmaster at the latter city has no jurisdiction over mailings to the former city.

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This affidavit has been particularly directed towards the particular facts in this case. We also submit herewith an affidavit by Richard S. Schwartz, which will be filed in every one of the presently pending Pent-R cases, which attacks the proposed relief requested by the Government on numerous other grounds, common to all of the cases pending in this Court, against this defendant.

For the reasons stated in this affidavit, as well as for the reasons set forth in Mr. Schwartz' more generic affidavit, we submit that the Government's motion for summary judgment should be in all respects denied, and that our cross motion for summary judgment should be in all respects granted.

Sworn to before me this

5th day of November, 1973

HERBERT MONTE LEVY

GILSOM SAFDEYE
Notary Public, State of New York
No. 3425478
Qualified in Kings County
Commission Expires March 30, 19...75

MINUTES OF HEARING DATED DECEMBER 11, 1969, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY.

BEFORE THE

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT

In the Matter	:	
of	:	
Violation of Prohibitory Order No. 3-4233 issued against	:	
Penter Books, Inc.,	:	
Respondent.	:	Docket No. BOS-H-69-79
On Behalf of: Bradley W. Day	:	
Postmaster: Hartford, Connecticut	:	
Complainant.	:	

United States Post Office,
New York, New York
December 11, 1969
1:00 P.M.

BEFORE:

JOHN Q. SHEEHAN,
Hearing Examiner

APPEARANCES:

HERBERT MONTE LEVY, ESQ.,
Attorney for Respondent,
295 Madison Avenue,
New York, New York.

MINUTES OF HEARING

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT

In the Matter of :
Violation of Prohibitory Order
No. 3-4233, issued against :

Pent-R Books, Inc., : Docket No.

Respondent. : BOS-H-69-79

On Behalf of: Bradley W. Day :
Postmaster: Hartford, Connecticut
:
Complainant.
:

United States Post Office
New York, New York
December 11, 1969
1:00 P.M.

BEFORE:
JOHN T. FARRELL, JR.,
Hearing Examiner.

APPEARANCES:

HERBERT MONTE LEVY, ESQ.,
Attorney for Respondent,
295 Madison Avenue
New York, New York

MINUTES OF HEARING

PROCEEDINGS

HEARING OFFICER: On the record. This is a Hearing in the matter of Violation of Prohibitory Order No. 3-4233, issued on behalf of Bradley W. Day, by the Postmaster at Hartford, Connecticut, against Pent-R Books, Inc., Post Office Box 1555, Grand Central Station, New York, New York, 10017, Post Office Docket No. BOX-H-69-79.

By stipulation between the parties and subject to the objections of counsel for the Respondent, the entire Post Office Department file is placed in and admitted in evidence.

MR. LEVY: In addition to all the objections and arguments raised in Hearings held and to be held this day, and which were held on November 14, 1969, I note the following:

Firstly, the first alleged mailing was to B.W. Day, whereas, the Notice of Prohibitory Order was signed by a Bradley W. Day, who may or may not have been the addressee; and since there is no proof that the person who signed the Notice for Prohibitory Order was the addressee, there is no adequate foundation.

In case I have not noticed it previously, I notice that there is no proof in any case whatsoever that the person who signed the Notice of Prohibitory Order is actually the addressee. We have no evidence in any of these records to show who signed that Notice of Prohibitory

Order, and of course, this is something which will be incorporated by reference, under all our stipulations.

Next, I notice that the Prohibitory Order prohibited a mailing to Bradley W. Day, whereas, the second alleged mailing was to B.W. Day, which, for reasons I have cited previously, is a fatal variance.

Next, I should like to note that there is nothing to show the date of mailing, or the date of receipt of the second alleged mailing.

Next, I note that the Postmaster in Hartford, Connecticut has no jurisdiction over mailings to Trumbull, Connecticut.

HEARING OFFICER: Your objections are noted, and decision is reserved with respect to them; and, with the agreement of Respondent's counsel, we will adjourn this hearing, with permission to him to submit any additional data, in affidavit form, with respect to the case.

Hearing is adjourned at 1:02 P.M.

(Hearing adjourned at 1:02 P.M.)

* * * * *

AFFIDAVIT OF RICHARD S. SCHWARTZ IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.

Defendant.
----------x

ANSWERING AFFIDAVIT OF RICHARD S. SCHWARTZ.

Docket #

72 C 603

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

RICHARD S. SCHWARTZ, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the Secretary of defendant PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. as well as of RAS ENTERPRISES, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment herein, and in support of defendant's cross-motion for summary judgment. I am fully and personally familiar with all the facts set forth herein.

AFFIDAVIT OF RICHARD S. SCHWARTZ

EXTRAORDINARY PRECAUTIONS TAKEN BY DEFENDANT TO AVOID OFFENDING RECIPIENTS OF ITS MAIL.

Upon the outside of all mailing envelopes sent by defendant, or upon the outside of an inner sealed envelope, there had always appeared a notice advising the recipient of the nature and content of the advertisement contained therein.* If the recipient did not want this material, he merely marked the envelope "Refused", as invited to by defendant, initialed it, and returned it to the postman or dropped it into a mail box which he was sure to pass sometime during the day, all at defendant's expense, after which defendant removed the addressee's name from its mailing list.

Defendant had thus avoided the necessity of an addressee viewing materials which he preferred not to be exposed to, unlike the requirements of the Pandering Law where, if the complaining addressee is to be at all honest, he must open and view the materials. We had also avoided the time

* This practice ceased in 1970, when the Goldwater Amendment to the Postal Reorganization Act of 1970 required the legend "Sexually Oriented Ad" to appear on the envelope or on an inner sealed envelope. Defendant then followed that law. See Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp.297 (E.D. N.Y. 1971).

consuming necessities inherent in the addressee obtaining the Prohibitory Order and following through for a complaint. We emphasize that defendant had always done this -- starting long before the effective date of the Pandering Law.

Defendant has thus always been extremely careful of the sensibilities of persons who might otherwise be offended. Incidentally, lest the Court think that the more than 200,000 prohibitory orders that have been received by the defendant seem excessive, we note that defendant has mailed perhaps more than 10,000,000 advertising pieces, and thus the percentage of prohibitory orders received by it from all its mailings is some 2%. And though s[illegible] 200,000 people purportedly objected to our ads, more than 450,000 copies of the book advertised have been sold. We further note that the advertisements, involved herein, for "The Photographic Manual of Sexual Intercourse", have been ruled non-obscene and constitutionally protected by Judge Masterson of the U. S. District Court for the Eastern District of Pennsylvania, United States v. Stewart, unreported, Crim. No. 69-162, Order dated October 13, 1971. Under these circumstances,

we note that if 39 U.S.C. §4009 or its successor be applied to the defendant, who is shown here to be engaged solely in publishing, selling and distributing materials protected by the First Amendment, with a warning notice described above, such application is unreasonable, arbitrary and capricious, repugnant to the due process of law clause of the Fifth Amendment and to the First Amendment, and deprives defendant of liberty and property without due process of law and constitutes an unreasonable, capricious and arbitrary restraint on First Amendment rights, especially in view of the severe limitations on First Amendment rights necessarily encompassed in any attempt to avoid a conflict with 39 U.S.C. §4009 -- as we shall show below. For the price of compliance with §4009, as we note below, is that many mailings cannot be made to persons who wish to receive such mailings, and therefore the statute prevents mailings to persons who desire to receive them, thus interfering with their -- and defedant's -- First Amendment rights -- a possibility never considered by the Supreme Court of the United States in Rowan, a case which

was instituted in the early days of the Pandering Law, without any opportunity whatsoever for the Supreme Court of the United States to have any but the sketchiest information on how the law worked out in practice.

SINCE THE DEFENDANT HAS NEVER WILLFULLY VIOLATED A PROHIBITORY ORDER, AND SINCE THE DEFENDANT HAS TAKEN ALL POSSIBLE PRECAUTIONS TO AVOID SECOND MAILINGS, INCLUDING DEPRIVING PERSONS WHO WISH TO RECEIVE ITS ADVERTISEMENTS OF THE RIGHT TO DO SO, AND SINCE DEFENDANT NOT ONLY DOES NOT THREATEN TO MAKE AN ADDITIONAL MAILING BUT HAS MADE IT VIRTUALLY HUMANLY IMPOSSIBLE TO DO SO, AN ORDER SHOULD NOT ISSUE ENFORCING THE PROHIBITORY ORDER.

The so-called Pandering Law went into effect on April 14, 1968. At that time, no one knew for certain what its operation and effect would be. But after more than 5 years of experience with this law, the defendant knows, and shall hereinafter demonstrate to this Court, that this law cannot be complied with except by disregard of defendant's own First Amendment rights -- which defendant has had to disregard in order not to be in conflict with the law. We thus claim that the law, so construed and applied, in its operation and effect, does violate the First Amendment.

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At no point whatsoever did defendant ever willfully make a second mailing in violation of a prohibitory order; at the present time, and for at least the last three years, because of the computerization that the defendant has used, we submit that not only does defendant have no intent of violating the prohibitory order here, but it could not do so even if it wished. It is our contention that in the complete absence of any willfulness in the second alleged mailing, plus the fact that there cannot be a willful mailing hereafter, an order of this Court should not issue.

As we shall show in some detail at length below, there is no doubt of defendant's good faith and diligence in attempting to comply with the Pandering Law. The cases involved here all deal with second alleged mailings in 1969, in which year Pent-R made about 10,000,000 mailings. But long prior to the 1968 effective date of the Pandering Law, we had set up a computerized system, solely in order to be able to completely comply with the terms of the law. That system was set up by the President of defendant, Ronald A. Stewart, with my assistance, through arrangements made with a computer

house and a system was devised as shall be set forth below. The cost of running that computer operation in the year 1969 was some $62,068. We are advised by the computer house, that it now estimates that it used the services of the equivalent of 25 people working full time for 6 months -- which it computes as the equivalent of one person working 3000 days, or 24,000 man hours -- in order to set up and process the system. As we note at length below, difficulties were encountered because of the use of rented lists, and rented lists were finally abandoned unless they were on computer tape, where the computer could prevent second mailings. The computer operation became more and more refined as we had more experience with it. The use of duplicate mailing labels was eliminated in 1970, when it was found that this resulted in violations of prohibitory orders. The system itself was finally programmed in 1971, and is still carefully programmed, to guard against second mailiings to such an extent that the computer eliminates even mailings that have not been prohibited. Thus, as we learned of mistakes

which took place, we corrected them at once, and took vigorous steps to prevent recurrence of these mistakes or further mistakes in the future. The new system of control greatly improved the situation. It is and has been as nearly perfect as a system can be.

Even originally, as we first set up the computer programming, we had a great rate of success with it. Thus, although we received something more than 200,000 prohibitory orders, the complaints of violation which have so far been upheld by the Post Office -- which bends over backwards to be fair to itself, -- number only approximately 500. Thus, even giving the Post Office the benefit of every doubt, even now the Government charges that only some one quarter of one percent (0.025%) of the prohibitory orders issued to Pent-R were violated. Moreover, every time we have received a complaint from the Post Office, we have once more fed the name and address of the complaining addressee into the computer, so that no further mailings would be made to such complaining addressees. We have fed these names and addresses into the computer for a third time upon receipt of a Complaint filed in this Court.

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Even if an injunction were issued in this case, it would and could have no effect by way of insuring better compliance in the future. With all the efforts we have made, it would be unjust to us to do so, in view of our good faith, and not in the public interest.

Actually, our success ratio is even better than the figure of 1/4 of 1% violations -- or 99 3/4% compliance. Thus, we note the following: All mailings for defendant were handled by another corporation, RAS Enterprises, Inc., of which Mr. Stewart is again the President and I am again the Secretary, as here. The mailings made by RAS Enterprises, Inc. are almost all of a nature that some would undoubtedly find erotically arousing or sexually provocative, so that the mailings of virtually every other corporation which had been processed by RAS have resulted in prohibitory orders. However, though we estimate that Pent-R, plus all the other corporations serviced by RAS (including RAS itself) have probably had approximately 248,500 prohibitory orders issued against them, there were only seven administrative complaints of violation

issued in the first half of 1972, none in the second half of 1972, nor in the first 6 months of 1973. Since then, there have only been three administrative complaints, all issued against an affiliated division of RAS, Companion Products; no material whatsoever was furnished in regard to one of the complaints, so we are at a loss to know whether or not it was justified; in the two cases where some materials were annexed to the complaint, it is perfectly clear that the prohibitory order was not violated. Thus, though there are approximately some 248,500 prohibitory orders issued and outstanding against all such corporations, there have been only some 10 administrative complaints of violation between January 1, 1972 and date -- an alleged violation rate of less than 0.004%*. Our computer house has estimated the expected rate of computer error to be 1/2 of 1%, so that

* This rate assumes that all ten administrative complaints were valid. Since we know that at least two of them were invalid, we have at most eight valid complaints, (only one of which was received after July 1, 1972); assuming the eight are all valid, the violation rate since January 1, 1972 is cut from 0.004% to 0.003%.

it is plain that, by falling below this rate of error, defendand (and its computer house) have done a superlative job. There is simply nothing else that we can do, of which we are aware, to avoid offending against the statute. Our good faith effort to comply with the law is perfectly clear. I now detail the course of our computer campaign.

Of course, before the Pandering Law became effective in 1968, defendant had tooled up in order to be able to comply with it. It immediately, upon receiving its first prohibitory order, began to comply with the law, in the following way.

After a prohibitory order was obtained in the Post Office, it was opened by defendant, and dated with the date of receipt (subject, of course, to error -- a lot of them in the beginning, where we failed to put on the date of receipt). A photocopy of each prohibitory order was made, which was sent to the computer house, or "Listing House", while defendant retained the original for its files. At the computer house, the names and addresses of persons to whom mailings should not be made, as they appeared in the ordering part of the prohibitory orders, were typed. These were then read by a device known

as an optical scanner, whose function it is to translate the written material into electrical impulses which are put, and then stored upon, a magnetic tape, in a symbolic form. The Pent-R mailing list was put up on a tape itself. When a name appearing on a prohibitory order also appeared on a tape for the Pent-R mailing list, the matching of the two tapes would prevent that person's name from being printed out by the computer on the mailing list which the computer prints out. At the same time, these were sorted out by zip codes.

Two problems became apparent. The first problem was with rented lists. The mailing lists, owned by, sold to and rented to defendant were and are lists of names and addresses of intellectual, mature adults who had previously received from others, similarly situated to the defendant, advertising or other materials similar to those disseminated by defendant. They were and are mailing lists of names of persons such as doctors, dentists, attorneys, accountants, druggists and other professional people, and owners or proprietors of various businesses thus assuring as much as possible that none of the

addressees were or are minors. Because of their nature, many of such mailing lists owned by defendant, and those rented or purchased from others by defendant and others, overlap, and the names of the same persons frequently appear on both such lists.

In view of the many prohibitory orders received by the defendant, it was physically impossible to visually compare, by human vision, the names of addressees thereon with the names in any lists rented by the defendant, especially since the names on rented lists were usually listed in random rather than in alphabetical order. Since the use of an optical scanner and computer to eliminate names on a list involves the copying of the names (by their translation into symbols stored on the magnetic tape), and since the owner of the rented list will not permit that list to be copied, the defendant found that it was impossible, simply impossible, for it -- or others -- to comply with a prohibitory order insofar as the use of a rented list is concerned.

Moreover, many mailing lists were not available for purchase, being available for rental only, no matter what the price. When a list is sold, the price is many times the rental charges. The operation and the effect of the statute has been that, after defendant learned that it could not comply with the law and also use a rented mailing list, the defendant was forced to abandon the use of most rental mailing lists. It could only use a rented mailing list if and when the owner of such list had himself put the list on magnetic tape, so that the computer could be used to check off the names of persons as to whom prohibitory orders were issued and outstanding. Thus, the defendant has been forced into the position where it can mail to persons on mailing lists, which are available for rental, only if and when such lists are on tape. The defendant has followed this practice since 1970. Defendant estimates that, because of this limitation, it and the corporation which processes its mailings, and which now owns its mailing lists -- RAS ENTERPRISES, INC. -- have been deprived of the right to mail to somewheres between 5,000,000 and 10,000,000 persons. Even allowing for a

20% of overlap of names on mailing lists already used with those on such rented mailing lists, the operation and effect of the statute has been to prevent mailings for First Amendment materials to approximately 8,000,000 persons within the United States within the last three years.

Further, in this connection, we note that on occasion, the rented mailing lists would not be delivered to the defendant or its computer house, but the owner thereof would insist upon having names and addresses on such list printed or typed by itself or others and sent to separately owned letter shops or mailers where the material to be mailed is inserted in the envelopes, or is otherwise packaged, and mailed. We have included in our estimate above such mailing lists which also are obviously unavailable to the defendant, because of its effort to comply with the Pandering Law.

We submit that the Pandering Law was not intended to apply to a second mailing made to a name on a list rented by the sender. If it was intended to so apply, then defendant, who had exercised the greatest care, would be deprived of

liberty and property without the due process required by the Fifth Amendment, since the only way to avoid second mailings to a name on a rented list is by so limiting the use of rented lists as set forth above, and thus effectively restricting the freedom of speech and press of the defendant herein.

There was a second problem which became apparent. In order to print out an entire protester-free list, the list would have had to be printed out anew at least once every 30 days. This particular aspect of the matter itself would have cost at least a minimum of $18,000 per year. To circumvent this cost, three carbon copies of each print-out were acquired at the comparatively nominal costs of $2.00 per 1,000 names. If the mailing label on the second alleged mailing is identical to that on the first alleged mailing, this occurred because the mailing was made due to the second mailing having been made before a new protester-free list could be printed out, it being impossible and illogical to coordinate dates of mailing with the effective dates of prohibitory orders.

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Accordingly, in order to comply with this unconstitutional provision of the law, the use of carbon-copies of mailing labels was abandoned by defendant in 1970.* Thus, the law unreasonably and substantially illegally prohibited the use of the mails for First Amendment purposes.

A third problem which was run into was that the optical scanner cannot exercise any judgment. Thus, if the name appearing on the prohibitory order was R. A. Jones, but the mailing list contained the name of Richard A. Jones, the computer would simply not recognize the name.

To avoid this problem, and similar problems, the only way to prevent second mailings was to so program the computer that all persons with the same last name at the same address should not get mail. This was done in 1970.

Of course, the slightest variation of an address would have rendered this an illusory protection; thus, if our

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*Such use has recently been resumed, but only to the limited extent that carbon copies are made of names and addresses only of those who have bought from us, as to whom the Pandering Law does not apply, Cf. Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp. 297 (E.D.N.Y. 1971). And in any event we have finally worked out a method for their use anyhow, so as to still comply with prohibitory orders.

attorney's wife Marilyn W. Levy, Esq., who at about that time had an address of 1133 Sixth Avenue, had appeared on a different mailing label as having an address of 1133 Avenue of the Americas, New York City -- the same actual address, but different to a computer -- a mailing to her could not have been prevented.

In the meanwhile, the Supreme Court of the United States had upheld the constitutionality of the Pandering Law though, as we noted, without any knowledge of the operation and effect of the law. The defendant, even though it had pioneered the way in presenting a method by which an unwilling recipient could get its name removed from its mailing list without any expense and minimal effort, had to even further circusmcribe its own First Amendment rights in order to even better comply with the law.

To even better comply with the law, an improvement was made on or about November 14, 1970. Under this new system, the computer sought out the first five letters of the last name of the addressee, and automatically removed from the mailing list the name of any person at the same address who has the same first five letters in his last name -- even if such

other persons had requested mailings from the sender, and even if their first names were different and were in fact different people. Thus, if one Murray Schwartz at 295 Madison Avenue, New York City, had obtained a prohibitory order, the computer would have automatically prevented mailings to all persons at that address the first five letter of whose last name are SCHWA. Thus, in order to comply with the law, mailings to Irving H. Schwartz and Herman Schwartzman as well as to Schwartz, Schindler & Levy, all existing persons or firms at that address, would have been prevented.

Thereafter a still further improvement was made, effective in the Spring of 1971. This eliminated from the RAS mailing lists the names of all persons as to whom the following three factors also appeared in the Government list supplied under the Goldwater Amendment or in the names supplied by the Prohibitory Order:

A. The first five letters of the last name coincide.

B. The first three digits of the street address coincide, and

C. The zip codes coincide.

Thus, in addition to weeding out the names and addresses of the persons mentioned above, all persons within the zip code area (10017) whose last names began with SCHWA at any address in that zip code area which began with 295, would be eliminated from the RAS list. Thus, any Schwartz, Schwartzman, Schwartzberg, Schwarz, etc. at 295 East 42nd or 295 East 41st, etc., etc., would not receive mail, even though some of such persons might be customers.* The problem is also solved of preventing a mailing to say,1133 Avenue of the Americas, when the address we were given was 1133 Sixth Avenue, since the numbers of the street address control. We have thus succeeded in avoiding the type of problem set forth in the annexed page from "Popular Photography."

Of course, there is still opportunity for error. A mistake may be made by the typist who types up the material for the optical scanner, in putting down the name and/or

---

* Our computer house has advised us that at Co-Op City, a gigantic housing development in New York City which our computer house programmed, there were last names duplicated in 35-40% of the cases. We note that should a Schwartz in Co-Op City obtain a prohibitory order, many hundred (possibly several hundred) other Schwartz's in Co-Op City could not get a mailing from us -- and that this would continue perpetually even after the one objecting Schwartz moved out.

address; a mere speck of dust on a computer tape may prevent the elimination of one or many names. It is estimated that there will be a computer error factor of one half of one percent (0.5%) which cannot be eliminated. (The Government, indeed, has made many errors in the tapes it supplied RAS under the Goldwater Amendment).

I should perhaps also add that when we receive a complaint of a violation of a prohibitory order, we once again feed the name and address of the addressee into the computer, even though in almost all probability it is already on our tapes, and though the second mailing was due to matters beyond our control (e.g., the second mailing was to a new address when the Postal Service had only ordered cessation of mailing to an old address).

That our program seems to be working is evident from the fact that in November, 1971, only four complaints were issued -- one of which seems to be explainable only by computer error, two of which were caused by Post Office error, and one of which cannot be explained because we have not been furnished with sufficient documentation, according

to advice from Herbert Monte Levy, Esq., our attorney. In October, 1971, only one complaint was received. So, too in September, 1971.

Thus, all of the corporations having their mail processed by RAS Enterprises, Inc. including that of Pent-R Books, Inc., in order to comply with the law, have taken precautions which result in elimination of mailings even to persons who may desire such mailings. We would estimate that that would include some 50,000 persons.* Under such circumstances, in addition to the clear violation of its First Amendment rights, it is further clear that there would not or could not be any willful violation of a prohibitory order. Accordingly, it would seem that this case would be moot, because any judgment, when rendered, could not have any practical legal effect upon the then existing controversy.

---

* This does not take into account persons in the Armed Forces who may be deprived of mailings, it would seem that one person named "Smith" or "Jones", by obtaining a prohibitory order, would effectively preclude all persons with such a respective last name at such APO address from receiving any mail from us. We have no idea how many persons have the same APO address; we are thus unable to come up with a figure for this problem.

Indeed, there is simply no controversy here.

To further note the good faith of defendant, we note that, as already stated, Pent-R did attempt to comply with all prohibitory orders, constantly tightening its preventative measures designed to insure that mail would not reach those who did not want to receive its mail. Moreover, when the Goldwater Amendment came into operation, requiring that publishers disseminating sexually oriented advertisements must subscribe to a list of persons who did not want to receive such ads, defendant was the first -- and for a long time the only -- subscriber to that list, which subscription cost it $10,000 a year.* While continuing to comply with that requirement, Pent-R tested the statute before a three Judge

*In analyzing the first such list supplied by the Government, we ascertained that 621 names on that list of 31,604 names had bought sexually oriented materials from one of the plaintiffs there on one, two, three or four occassions previously. Thus, some 2% of those on the Government list are prior buyers. Since the Government list includes names of children, if we assume 2.5 children per adult name, then some 5% on that list were prior buyers from plaintiffs there. We cannot even estimate how many on that list were prior buyers from other sources of supply. This further demonstrates Mr. Levy's thesis that persons are pressured into acting to avoid the receipt of ads for sexually oriented materials.

Federal Court; during the course of those proceedings, the Government constantly modified its regulations, under the Goldwater Amendment so that that case was rendered moot and dismissed. One of the modifications followed Pent-R's practice, begun long before the statute was enacted or became effective, of giving a warning notice of the type of contents on an inner sealed mailing envelope. Pent-R Books, et al v. U. S. Postal Service, 328 F.Supp. 297 (1971). To further put this matter in context, we note that although some 200,000 prohibitory orders were issued against Pent-R, only approximately 750 complaints were ever made under the Pandering Law, according to the estimate of our attorney and the informal estimates of Postal Service officials -- an alleged violation rate of 0.375% at most. Of the some 750 cases in which hearings were held, approximately 1/3 of these resulted in dismissal in the complaint, while approximately 500 of the cases so far have resulted in the complaint being upheld by the Post Office, with or without a hearing, or some alleged 1/4 of 1% (0.025%) of alleged violations.

AFFIDAVIT OF RICHARD S. SCHWARTZ

The defendant is a thoroughly law abiding corporation. We would estimate that it has spent by this time at least some $300,000 in order to comply with the Pandering Law, as well to comply with the Goldwater Amendment. Its vast expenditures of money, made in an effort to comply with the law, show that it is not a law breaker, but a law observer. To issue an injunction in any case such as this, which has become completely moot by the use of such a computerized method that not only are mailings to protesters avoided, but also mailings to persons who are not protesters, would be to have the Court issue a useless order -- and an unconstitutional one at that.

I understand that it is hornbook law that a statute must be construed so as to avoid raising questions of constitutionality. We believe that we have raised substantial questions as to constitutionality in the operation and effect of the Pandering Law -- not involved in the Rowan case --, which must be faced if this Court is to issue an order. Succinctly stated, it is a fact that the law cannot be complied with except by denying the defendant its right to communicate

to those who would receive its communications, and the right of those who receive such communications to receive them. We submit that the law should be so construed in this case as to mean that there is complete mootness in the case at bar, in order to avoid the raising of these questions.

We have bent over backwards to make any possible settlement with the Government. It has never suggested any deficiency in our computerized system for compliance with prohibitory orders. It has never suggested any improvement. Since 1971, at least, it has been fully informed of our system's working. What more does the Government want from us? Our standard of attempted compliance, our actual rate of better than 99 3/4% compliance with prohibitory orders, speak for themselves. No injunction need be granted. It could have no possible effect whatsoever. Any practical suggestions for improvements in our computerization program will be gratefully accepted. Can we do more?

AFFIDAVIT OF RICHARD S. SCHWARTZ

WHEREFORE, deponent prays that the plaintiff's motion for summary judgment be denied, that defendant be granted summary judgment dismissing the complaint, and that the prohibitory order be vacated.

RICHARD S. SCHWARTZ

Sworn to before me this
8th day of November, 1973.

GILSOM SAFDEYE
Notary Public, State of New York
No. 3[illegible]478
Qualified in Kings County
Commission Expires March 30, 19 75

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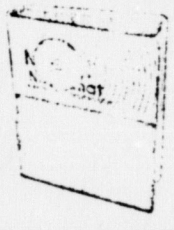

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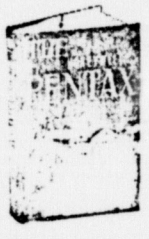

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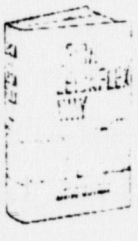

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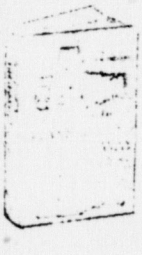

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NEWSFRONT *continued from page 14*

in convention here that Kodak is trial marketing three-solution process for color prints. It may replace present five-solution process. Kodak is concerned about water pollution and silver waste. New process "reduces effluent volume by 40 percent," has bleach-fix that is "completely biodegradable, can be regenerated and allows efficient silver recovery." Seiler said company is working hard to make non-toxic chemicals and cut level of BOD_5. He said Kodak has managed to formulate Ektaprint C stabilizer without zinc, another potential pollutant.

NEW YORK—*Our man Rothschild to speak at communication parley:* Among panelists at 15th annual Wilson Hicks International Conference on Communication Arts (formerly Miami Conference) will be *Popular Photography*'s senior editor, Norman Rothschild. Other participants at meeting, slated for April 28-30 at U. of Miami, Coral Gables, Fla., include Gilbert M. Grosvenor, editor and vice president of *National Geographic*; Erich Hartman of Magnum; Richard Grossman, president of Grossman Publishers; Tony Vaccaro of *Look*; Inge Morath, free-lance photographer and wife of playwright Arthur Miller; Burton McNeeley, undersea photographer; John Schearer, free-lance photographer; Larry Schiller, film maker; Paul Huc, photographer from Holland; Martin Duffy, manager of design and media for A.T.&T. Co.; Marcello Ablaza, official photographer to the president of the Phillippines; Dr. Wesley Clark, dean of the School of Journalism, Syracuse University; and John Olson, staff photographer of *Life*. Conference also serves as annual meeting for American Society of Magazine Photographers.

NEW YORK—*With deep regret, we note the following deaths:*

Charles Rado, founder and president of Rapho Guillumette photo agency that represents photographers throughout the world. Rado often fostered work of unknown photographers, many of whom were exhibited at Museum of Modern Art.

Dr. Emanuel Goldberg, scientist, author, and retired director general of Zeiss Ikon AG. He emigrated from Paris to Israel, where he founded laboratory for applied optics, now known as EL-OP. He wrote *The Fundamentals of Reproduction Technique* and *The Structure of the Photographic Image.*

A. Aubrey Bodine, photo director of *The Baltimore Sunday Sun* magazine, and winner of hundreds of international photo awards. He had worked with *The Sun* papers for nearly 50 years. Many of his best pictures appeared in *My Maryland.*

Kyoichi Sawada, U.P.I. photographer, killed in Pnompenh, Cambodia, while covering the war. He won Pulitzer Prize in 1966 for [illegible]cture of Vietnamese mother fleeing enemy attack. ○

MEMORANDUM AND ORDER BY DOOLING, D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA,

-against-

PENT-R-BOOKS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - -X

72 C 603
(DAY)
MEMORANDUM
and
ORDER

Appearances:

LLOYD H. BAKER, Esq. (DAVID G. TRAGER, Esq., United States Attorney, of Counsel) for Plaintiff

HERBERT MONTE LEVY, Esq., for Defendant

DOOLING, D. J.

In this action to obtain an order commanding compliance with a Post Office Prohibitory Order issued under 39 U.S.C. § 3008 (formerly § 4009), the plaintiff has moved for summary judgment on the administrative record, and defendant has cross-moved on affidavits. All objections of defendant in this action were raised and disposed of in 69 C 1362, ~~xxx~~ 72 C 588 , and 69 C 1290, , and what has been said in those dockets need not be repeated here. Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted and defendant's cross-motion is denied. A form of judgment has been approved for entry by the Clerk.

Brooklyn, New York
July 29, 1974.

JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

:

-against- : 72 C 603
(DAY)

PENT-R-BOOKS, INC., : JUDGMENT

:

Defendant.

- -X

This action came on for hearing on the cross-motions of the parties for summary judgment before the Honorable John F. Dooling, Jr., District Judge, and the motion of plaintiff having been granted and that of defendant having been denied in the decision duly rendered, it is

ORDERED and ADJUDGED that defendant PENT-R-BROOKS, INC. its agents and assigns (1) refrain from any further mailings BRADLEY W. DAY, 16 HEMLOCK TRAIL, TRUMBULL, CT. 06611,

or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder or resident; (2) immediately delete the above-named party from all mailing lists owned or controlled by it, its

JUDGMENT

agents or its assigns; and (3) immediately abstain from any sale, rental, exchange or other transaction involving mailing lists bearing the name of the party named above.

Brooklyn, New York

July 29, 1974.

Approved:

U. S. D. J.

CLERK

UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF NEW YORK.

----------X

UNITED STATES OF AMERICA,

Plaintiff,

v.

PENT-R-BOOKS, INC.,

Defendant.

----------X

CIVIL ACTION NO. 72C 606.

DOCKET ENTRIES

U.S.A. v. PENT R BOOKS INC.

72C 606

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
/9/72	Complaint filed. Summons issued.	1JS5
-26-72	Summons returned and filed. Deft srvd 5-25-72.	2
-27-73	Pltff's notice of motion ret 10-15-73 and memo in support of motion for summary judgment filed.	3/4
1-29-73	Notice of cross motion and memorandum ins upport of deft's cross motinn for summary judgment filed.	5/6
-24-74	By DOOLING, J. - Memorandum and order dtd 7-23-74 granting pltff's motion for summary judgmet and denying deft's cross-motion for summary judgmant filed.	7
-24-74	JUDGMENT dtd 7-23-74 granting permanent injunction against deft filed.(p/c mailed to attys).	8
-19-74	Notice of appeal filed. Duplicate mailed to C of A & pltff. jn	9

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R BOOKS, INC.,

Defendant.

- X

COMPLAINT

Civil Action No.

Plaintiff, UNITED STATES OF AMERICA, by its attorney, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, complaining of the defendant, alleges:

1. This Court has jurisdiction of this action pursuant to Public Law 90-206, Sec. 301 and Title 28, U.S.C., Sec. 1345.

2. The defendant is a New York corporation having an office for the conduct of business at 203 Kings Highway, Brooklyn, New York.

3. On or about March 25, 1969, defendant mailed or caused to be mailed through the U. S. mail to H. J. Molaison, New Orleans, Louisiana (hereinafter referred to as "addressee") material offering for sale certain advertisement for Photographic Manual of Sexual Intercourse.

4. The said item was mailed from Brooklyn, New York, within the Eastern District of New York.

5. The above-described mailing consisted of photographic advertisements which the addressee believes to be erotically arousing or sexually provocative.

6. The addressee requested the Postmaster General to issue an order directing defendant, its agents or assigns, to refrain from further mailings of such material to him.

7. Upon receipt of this request and pursuant to Public Law 90-206, Sec. 301, on April 14, 1969, the local Postmaster, by order of the Postmaster General, issued Prohibitory Order No. 392-69, which ordered and directed defendant, its agents and assigns, to delete his name from any sales or transactions involving lists bearing his name, effective 30 days after receipt of the order.

8. A copy of the order was mailed to defendant by registered mail on or about the date it bears.

9. Thereafter, the Postmaster General had reason to believe that defendant or someone acting on its behalf violated the order.

10. On or about October 1, 1969, in violation of Prohibitory Order No. 392-69, defendant, or someone acting on its behalf, mailed or caused to be mailed through the United States mail to the addressee, material such as that described in paragraph 3 of the complaint.

COMPLAINT

11. On October 13, 1969, the local Postmaster, by order of the Postmaster General, issued a complaint advising that evidence had been received that defendant, or someone acting on its behalf, had violated Prohibitory Order No. 392-69, and advising defendant that any response for hearing had to be filed within 15 days.

12. A copy of the complaint was mailed to defendant by registered mail on or about the date it bears.

13. Defendant did not request a hearing or otherwise respond to the complaint.

14. On November 4, 1969, a determination was made that defendant or someone acting on its behalf had violated Prohibitory Order No. 392-69.

15. A copy of the determination was mailed to defendant by registered mail on or about the date it bears.

16. The Postmaster General thereafter requested the Attorney General, pursuant to the provisions of Public Law 90-206, Sec. 301, to make application to a district court of the United States for an order directing defendant to comply with the order.

COMPLAINT

WHEREFORE, plaintiff, UNITED STATES OF AMERICA, prays:

a. That the court enter judgment herein requiring defendant, its agents and assigns, to comply with Prohibitory Order No. 392-69, and more specifically, that this Court order and direct defendants, its agents and assigns, in conformity with this order to cease and desist from making any further mailings to the designated addressee from all mailing lists owned or controlled by defendant, its agents or assigns, and to refrain from selling, renting, exchanging, or engaging in any other transaction involving mailing lists bearing the name of said addressee.

b. That the Court grant to plaintiff such other and further relief as may be just and proper.

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By Lloyd H. Baker
Lloyd H. Baker
Assistant U. S. Attorney

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R-BOOKS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - X

NOTICE OF MOTION

72 C 606

PLEASE TAKE NOTICE that upon the annexed certified copy of the record of the proceeding in the Post Office Department, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a term for the hearing of motions to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, Courtroom 8, on the 15th day of February, 1973, at 4:30 o'clock in the afternoon of that day, or as soon thereafter as counsel may be heard, for

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

an order pursuant to Rule 56 granting summary judgment to the plaintiff, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: Brooklyn, New York
September 26, 1973

ROBERT A. MORSE
United States Attorney
Attorney for the United States
of AMERICA

By:

_____
Lloyd H. Baker
Assistant U. S. Attorney

TO:

HERBERT MONTE LEVY, ESQ.
295 MADISON AVENUE
NEW YORK, NEW YORK 10017

1534a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS.

GC 6612

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT

Washington, D.C. 20260

May 11 19 70

CERTIFICATION

he certify that the annexed documents constitute true copies of the original records which are in the official custody of the Post Office Department to wit: P.O. Docket No. R 11-NO-39 (H. J. Molaison)

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, on the day and year first above written.

William F. Lawrence
Assistant General Counsel
Mailability Division

POD Form
Sep. 1969

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

ORDER

In the Matter of Violation of Prohibitory Order No. 392-69
Issued Against
Pent-R Books, Inc.
P.O. Box 81
Brooklyn, New York 11223

and agents or assigns, pursuant to authority of Title 39, U. S. Code, §4009.

P. O. Docket No. R 11-20-39

Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned Prohibitory Order.

Paul V. Burke
Postmaster

New Orleans, Louisiana 70113
City State ZIP Code

[POSTMARK] NEW ORLEANS, LA POSTMASTER'S OFFICE NOV 4 1969 USPO

Dated: November 4, 1969

POD Form
May 1968 2154

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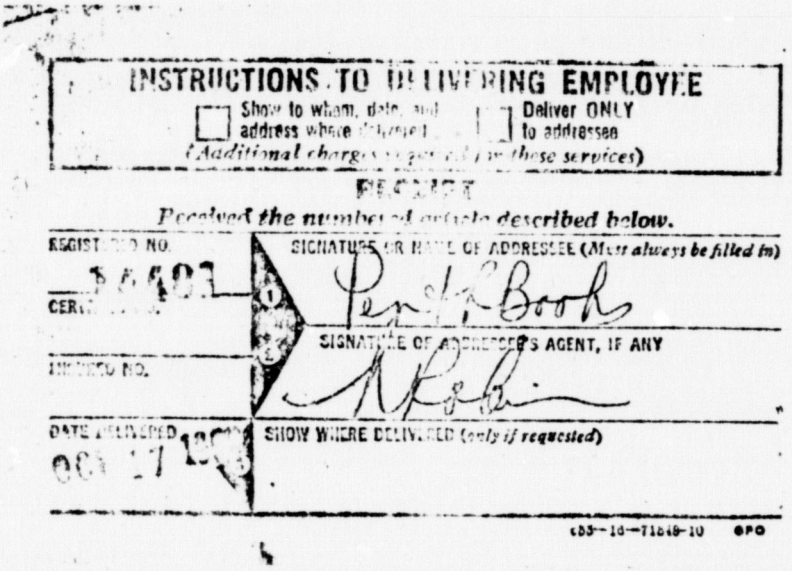

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered

☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the number of article described below.

REGISTERED NO.

CERTIFIED NO.

INSURED NO.

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

Penrhyn Book

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

635—16—71848-10 GPO

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

COMPLAINT

In the Matter of Violation of Prohibitory Order No. 392-69
Issued Against

Pent-R Books, Inc.

P.O. Box 81

Brooklyn, New York 11223

and agents or assigns.

On behalf of:

H. J. Malaisse
Complaining Addressee

P. O. Docket No. R 11-NO-39

On the 17th day of April, 1969, you received Prohibitory Order No. 392-69, copy of which is attached hereto, issued against you and your agents or assigns under authority of Title 39, U.S. Code, §4009, upon request of the above-named addressee.

Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:

1. By further mailings to the addressees listed in the order. See Exhibit attached hereto.
2. You failed to immediately delete from mailing lists owned or controlled by you or your agents or assigns the names of the addressees listed in the order. See Exhibit attached hereto.
3. You or your agents or assigns have sold, lent, exchanged, or made other transactions involving mailing lists bearing names of addressees listed in the order. See Exhibit attached hereto.
4. Other (specify):

[Strike inapplicable items].

Any response to this Complaint or request for a hearing with respect thereto must be filed, in writing, in the Office of the Regional Counsel, Post Office Department, _____ (Address)

with the undersigned Postmaster, within fifteen (15) days after receipt of this Complaint. Attached hereto is copy of the Department's Rules of Practice relative to answering this Complaint and requesting a hearing in the matter.

[POSTMARK] OCT 13 1969

Dated: October 13, 1969

Paul V. Burke
Paul V. Burke
Postmaster

New Orleans, Louisiana 70113
City State ZIP Code

POD Form 2153
May 1968

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

*FIRST EDITION SPECIAL OFFER - $9.98 (Limited Time Only)

Please check appropriate box!

- Please ship book and place my name on your mailing list.
- I am not ordering at this time but place my name on your mailing list.
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Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

Signature .....

701

H MOLAISON
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NEW ORLEANS LA 70124

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

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have signed the stat
I understand that if
may return the boo
it for an immediat

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- I have enclosed $
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FIRST CLASS MAIL

PERSONAL

This envelope contains an UNSOLICITED SEL
offering for sale to Adults
TITLE 18 SECTION
learn and return it
will endeavor to remove

GUARANTEED

KS, INC.

Station
Y. 10017

plain sealed wrapper____ copies
phic Manual Of Sexual Inter-
st Edition Special price of only
m over the age of 21 years and I
ement on the left to that effect.
I am not completely satisfied, I
ok within 10 days after I receive
e refund of the purchase price.

Handsome Kivar Binding only

Gold-Stamped Casebound
only $12.98

_____ Cash Check

$2 Deposit. Please ship C.O.D.

close full payment and save
fees!!

FIRST CLASS
U.S. POSTAGE
PAID
6c

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

1538a

STRATED BROCHURE

1539a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom and date delivered ☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. 111,230

CERTIFIED NO.

INSURED NO.

DATE DELIVERED 4-17-69

1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*) Kent R

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY D Bloom

SHOW WHERE DELIVERED (*only if requested*)

c50—16—71845-9 GPO

1540a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
PROHIBITORY ORDER

In the Matter of

Post-R Books, Inc.
Mailer
P. O. Box 81
Brooklyn, N.Y. 11223
and agents or assigns

PROHIBITORY ORDER

NO. 392-69

WHEREAS, we were furnished a mailing piece containing advertising matter which you mailed or caused to be mailed to

H. J. Malaisen
(Name of Addressee) 601
5531 Marshal Foch St.
New Orleans, LA 70124
(Address)

and

WHEREAS, said addressee has determined your advertisement to be a pandering advertisement offering for sale erotically arousing or sexually provocative matter; and

WHEREAS, said addressee has requested the issuance of an order pursuant to the provisions of Title 39, U.S. Code, §4009, a copy of which law is printed on the reverse side hereof, directing you and your agents or assigns, to refrain from making any further mailings to him [redacted]

NOW, THEREFORE, pursuant to the cited statute, you, your agents and assigns, are hereby ordered:

(1) To refrain from any further mailings to the following parties at the indicated address, or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder, resident, boxholder, postal patron, rural route boxholder, and local, effective on the 30th calendar day after receipt of this order:

ADDRESS: 5531 Marshal Foch Street
(Street)

New Orleans (City) Louisiana (State) 70124 (ZIP Code)

(2) To immediately delete the above-named parties from all mailing lists owned or controlled by you or your agents or assigns.

(3) To immediately abstain from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the parties mentioned above.

[POSTMARK] APR 14

Dated: April 14, 1969

Paul V. Burke
Postmaster

New Orleans, LA 70113
City State ZIP Code

POD Form 2152
May 1968

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

PUBLIC LAW 90-206 **December 16, 1967**

"§4009. Prohibition of pandering advertisements in the mails

"(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postmaster General to refrain from further mailings of such materials to designated addressees thereof.

"(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postmaster General shall issue an order if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

"(c) The order of the Postmaster General shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after receipt of the order. The order of the Postmaster General shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

"(d) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, he shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for his belief and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

"(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punished by the court as contempt thereof.

"(f) Receipt of mail matter thirty days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

"(g) Upon request of any addressee, the order of the Postmaster General shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

"(h) The provisions of subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, United States Code, shall not apply to any provisions of this section.

"(i) For the purposes of this section—

"(1) mail matter, directed to a specific address covered in the order of the Postmaster General, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postmaster General's order; and

"(2) the term 'children' includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.".

(b) The table of contents of chapter 51 of title 39, United States Code, is amended by adding at the end thereof—

"4009. Prohibition of pandering advertisements in the mails."

SEC. 302. The provisions of this title shall become effective on the one hundred and twentieth day after the date of enactment of this Act.

Effective Date: 4-15-68.

1542a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
NOTICE FOR PROHIBITORY ORDER AGAINST SENDER OF PANDERING ADVERTISEMENT IN THE MAILS

I, Henri Jean Molaison (Print), addressee ~~[parent of minor addressee]~~ of the enclosed mailing from PENT-R BOOKS, INC. of (Print) P.O. Box 81, Brooklyn, N.Y. 11223, consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, §4009, I request that the above named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailings to me ~~[as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday]~~. I request more than this (see below)

Henri Jean Molaison 10 April 1969
Signature Date

5531 Marshal Foch St.
Street

New Orleans La. 70124
City State ZIP Code

NAMES OF CHILDREN BIRTH DATE

This form evades the real issue. I have no minor children in my home, but YOU know this literature is reaching homes that have minor children. I AM NOT CONTENT WITH MERELY STOPPING THIS TYPE OF PORNOGRAPHIC MAIL FROM REACHING MY HOME; I EXPECT THE POST OFFICE and JUSTICE DEPTS. TO FLUSH OUT THE SOURCE OF THIS OBSCENE MAIL, GET HIM OR THEM IN PRISON, AND STOP ANY OF THIS STUFF FROM BEING MAILED OUT AT ALL.

NOTE: This notice must be accompanied by the objectionable advertisement and the envelope, or other mailing wrapper, in which the advertisement was received.

POD Form 2150
May 1968

PENT-R BOOKS INC

P. O. BOX 81
BROOKLYN, N. Y. 11223

BROOKLYN N. Y.

Received on or about March 25, 1969

H J Mulaison

FIRST CLASS MAIL

PERSONAL

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTR
offering for sale to Adults Only, a new marriage ma
wish this mail or if you are not over the age of 21 ye
THIS ENVELOPE! Simply mark this envelope "RE
initials and return it to your mailman. Upon the return
will endeavor to remove your name from our mailing li

DON'T DONATE BUT WITH OUR SPECIAL MONEY-BACK GUARANTEE!

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

*SPECIAL PRE-PUBLICATION PRICE – ONLY $9.98 (Limited Time Only)

Please check appropriate box!

- ☐ Please ship book and place my name on your mailing list.
- ☐ I am not ordering at this time but place my name on your mailing list.
- ☐ Remove my name from your mailing list.

Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

signature .....

55

H J MULAISON
5531 MARSHAL FOCH ST
NEW ORLEANS LA 70124

601

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PENT-R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 10017

PENT-R BOOKS INC.

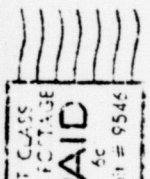
Gentlemen:

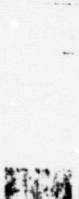
Enclosed please find $ .....

[ ] Cash [ ] Check [ ] Money Order

Please rush me in plain sealed wrapper _____ copie
of "The Photographic Manual Of Sexua
Intercourse" at the special pre-publication price o
only $9.98 per copy. I am over the age of 21 year
and I have signed the statement on the left to tha
effect. I understand that I may return the book
within 10 days after I receive it for an immediate
refund of the purchase price.

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS





ATED BROCHURE
nual. If you do not
ars, DO NOT OPEN
FUSED", sign your
of this envelope, we
t. Thank You.

DEFENDANT'S NOTICE OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.

----------x

NOTICE OF CROSS MOTION.

Docket No.
72 C 606

The defendant upon the annexed affidavits, cross-moves the Court as follows:

1. To dismiss the action, without prejudice to restoring it to the calendar upon a further showing of a further alleged violation of the law, under the general principles of equity discretion.

2. To grant summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

3. To vacate the purported prohibitory order issued in this case.

DEFENDANT'S NOTICE OF CROSS-MOTION

4. To grant such other, further and different relief as to the Court may seem just and proper in the premises.

SIGNED:

Herbert Monte Levy

HERBERT MONTE LEVY
Attorney for Defendant
295 Madison Avenue
New York, New York 10017
689-2220

AFFIDAVIT OF HERBERT MONTE LEVY IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant,

----------x

ANSWERING AFFIDAVIT OF HERBERT MONTE LEVY, Esq.

Docket # 72 C 606

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

HERBERT MONTE LEVY, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the attorney for PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment, and in support of our cross-motion for summary judgment. I am personally and fully familiar with all the facts set forth herein.

At the outset, I note that this case is thoroughly moot, and that there is no case or controversy presently pending before this Court; any order entered by this Court

enforcing the prohibitory order (hereinafter sometimes PO) would be a useless order. As shown by the annexed affidavit of RICHARD S. SCHWARTZ, the defendant has taken every precaution humanly possible -- and more so -- using every possible available computer technology, to insure that second mailings are not made to persons in regard to whom PO's have been issued. Indeed, I myself have asked the Justice Department representatives whom I met with on this case on September 25, 1973 in Washington D.C. -- Messrs. Schiffer and Cogbil -- whether they had any suggestions as to how my client might take any better precaution to insure against violations, and they were silent on this score. Nor has the Assistant United States Attorney in charge of this case locally, Lloyd Baker, Esq., ever been able to suggest any additional precautions which my client should take.

Not only has my client taken every precaution to avoid the possibility of a second mailing, but my client's position, as stated in the annexed affidavit of Mr. Schwartz, is that it has no intention whatsoever of violating any PO, that under its existing computer technology it cannot violate the PO even if it wanted to; accordingly, there is not only no threat of violation of a PO, but no possibility of violation of the PO (barring computer error). Certainly,

a computer error could not be the basis for any finding of a contempt, nor could a human error, perhaps by feeding an erroneous entry into the computer, ever be deemed a contempt. Hence, since nothing can be accomplished by any order to be entered, and since there is neither threat nor possibility of an intentional violation of a Court order, there is no ground for equity to issue an injunction. Certainly, in its discretion, no injunction should issue. The case, too, is clearly moot, and we cannot see how there is any case or controversy within the meaning of the United States Constitution, which would give this Court jurisdiction.

Nonetheless, though we note this plea in bar because of lack of jurisdiction, because of lack of case or controversy, mootness, and no threat or intent by the defendant to act illegally, we now turn to other aspects of the matter.

Irrespective of what we have set forth above, and what we set forth below, this case -- along with all the other related cases -- must be dismissed for the failure of the Postmaster General to make the final finding and order that he is required to make before any jurisdiction can attach in this Court. Thus, Subsection D of Section 4009 provides as follows:

> "If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a District Court of the United States for an order directing compliance with such notice."

Thus, the Postmaster General must determine that the order given -- the prohibitory order -- has been or is being violated. Yet neither the order in this case, nor in any of the companion cases, makes any such determination. In fact, no determination whatsoever was made by the Postmaster General. The order itself, a form order, merely recites as follows:

> "Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned prohibitory order."

The mere claim, or fact, that satisfactory evidence was presented that defendant acted in violation of a prohibitory order, does not constitute a determination that defendant had violated or was violating the prohibitory order.

Satisfactory evidence could be presented to show a violation, and there could be evidence presented contra as well. Thus, there was simply no determination required by statute, but merely a recital that a prima facie case had been made out.This is totally different from a determination having been made of a violation.

Moreover, even had a determination been made, the statute required such a determination to be made by the Postmaster General. The determination here, such as it was, was made by an anonymous person using his initials . We are aware of no delegation of authority to a Postmaster to make such a determination, and for such a local official to make a request to the Attorney General of the United States. Yet that is apparently what happened here. Moreover, if there were any such purported delegation pursuant to either regulation or rules, we know of no authorization for such delegation, and therefore, the entire proceeding, predicated upon this order, must fall as being without a foundation.

The so-called Pandering Law, 39 U.S.C. Section 4009, gives complete discretion to the complaining addressee to determine whether the advertisement occasioning the Prohibitory Order (hereinafter sometimes "PO") is indeed a pandering advertisement. Of course, many complaining

addressees, whose libido is aroused by non-sexual materials or who are eager to shut off the mailed flow of advertisements, have certified that an advertisement is a pandering one, when to a more reasonable person it might appear that such an advertisement was not pandering, i.e., neither erotically arousing nor sexually provocative. Thus, according to the Report of the Commission on Obscenity and Pornography (Bantam Books Edition, 1970), at p. 133:

> "Prohibitory orders have been issued against nearly 400 separate business firm names mailing sexually oriented materials; orders were also issued against dozens of business firms advertising nonsexual products."

However, according to information we have received, the Government has not sought even one Court order to enforce a postal prohibitory order against any of the dozens of business firms advertising nonsexual products. It has sought Court orders only when the first mailing was -- in the judgment of the Post Office -- pandering, i.e.,of a sexually provocative or erotically arousing type. Thus, for example, I have received information, and therefore allege, that while prohibitory orders have been obtained against mailings made by such organizations as the American Civil Liberties Union and the Practicing Law Institute --

neither of which mail any material which could conceivably be called sexually provocative or erotically arousing -- the Post Office and its successor, the Postal Service, have completely failed to go into Court to seek a Court Order enforcing a PO, even when there has been a violation of the PO. We defy the Government to show otherwise.

Thus, the Government has been selectively determining in which cases it should seek a Court order. Since nothing can happen to a mailer unless and until he violates a Court order, it is quite clear that Post Office censorship is now being used in the place and stead of the discretion of the complaining addressee. Thus, the First Amendment is violated, because as construed and applied, and in its operation and effect, the law vests the plaintiff and the Attorney General with the power to make discretionary evaluations of material, and to determine which advertisers to move against, on the basis of the type of material advertised. The underlying statute is repugnant to the First Amendment and deprives defendant of its First Amendment rights, and is further repugnant to the due process clause of the Fifth Amendment, and further deprives

defendant of liberty and property without the due process of law required by the Fifth Amendment, as well as depriving defendant of the equal protection of the laws under the said Fifth Amendment.

The administrative complaint issued by the Post Office did not state any cause of action, in that it failed to allege the date of the alleged second mailing, and in that it further failed to allege that such alleged mailing was made more than 30 days after the defendant's alleged receipt of the alleged PO.

As construed and applied, and in their force and effect, 39 U. S. C. Section 4009 and the Rules and Regulations promulgated thereto and thereunder, are repugnant to the due process of law clause of the Fifth Amendment and to the Sixth Amendment, and deprive defendant of liberty and property without said due process, and of its right under the Sixth Amendment to a trial by one who is impartial, to be informed of the nature and cause of the accusation, to confront and cross-examine the witnesses against it, and to have compulsory process for obtaining witnesses, the defendant not being given the "full hearing" afforded him according to the decision of the Supreme Court of the United States in Rowan v. United States Post Office Department, 397 U.S. 728 (1970), for the following reasons:

AFFIDAVIT OF HERBERT MONTE LEVY

In every Post Office hearing, the hearing officer--an employee of the Post Office which is bringing the complaint--has been the prosecutor, the judge, the jury, and, to the extent to which he has introduced in evidence varying papers, a witness. Wherever the Post Office has purportedly determined that defendant or someone acting in its behalf has violated a PO, such determination has been made without the testimony of any person whatsoever identifying any materials or the dates of their being received or sent, thus without any legal evidence whatsoever. Despite repeated demand made therefor by the defendant here, no complaining addressee has ever been produced at an administrative hearing, nor has any such person's testimony been permitted to be taken by deposition after due and proper requests therefor, the Post Office disregarding its own rules and regulations in regard thereto, and consistently failing to give any information whatsoever on how its own rules and regulations are being implemented. It is our understanding that the Post Office has never even inquired as to the willingness of the complaining addressee to appear and give testimony at a Post Office hearing. Thus, any mere indication by a complaining addressee, or any written (but invariably unsworn) statement by the complaining addressee,as to the date of

receipt of the second mailing, has been accepted as uncontrovertable Gospel truth by the Post Office, with no opportunity being given to the defendant to show error or hostility on the part of the complaining witness.

Insofar as the plaintiff may rely upon the presumption of 39 U. S. C. Section 4009(f), such presumption is arbitrary, capricious, unwarranted and unreasonable, especially in view of the notoriously poor mail service of the last several years.

The defendant has been denied its right to a hearing before the Post Office, and, unbelievable as it may sound, the Post Office has in effect taken a default against my client by reason of its own inefficiency, by reason of its own inability to properly transport the mail to itself. The Pandering Law requires that a demand for a hearing be filed with the Postmaster General within 15 days after the PO has been received by the mailer. The Post Office immediately began violating this provision of the law, by requiring the demand for a hearing to be addressed not to Postmaster General, but to the local Postmaster, or to someone at a local Post Office; this is clear from an examination of the text of the complaint

issued by the Post Office. Thus, it was improper for the Post Office to take a default in any situation, since it required a filing with the wrong official.

Nonetheless, at the time that the administrative complaint was issued in this case, I had followed the following procedure:

The latest stamp on the back of the envelope containing the administrative complaint, I reasoned, was the earliest date upon which the PO was delivered to client; certainly, it was a reasonable date to measure from, since obviously the Post Office could not have put a stamp on the back of the envelope after it had parted with its custody. Accordingly, when received from client, it was my practice to make a notation as to the deadline date for mailing in the demand for hearing, based on the latest Post Office stamp. Where a stamp showing date was put on by my client, I measured from this date of receipt. I calculated this date as being 14 days from the latest date stamped on the back of the envelope, except where the 15th day would fall on a Monday, and I would note my deadline as being the Friday preceeding that Monday. Appropriate adjustments were made if a holiday intervened. I would then make it my business to mail out my demand for a hearing on or prior to that deadline date.

AFFIDAVIT OF HERBERT MONTE LEVY

This was my practice for many many months. The Pandering Law's effective date was April 14, 1968. I had no problems whatsoever with my practice until sometime in 1969 when I noticed that, although I was following my prior plan of action, I was suddenly the recipient of defaults all over the place.

Upon inquiring as to why these defaults were being taken, I was orally advised by Post Officials (just who advised me, I do not now remember) that the Post Office had adopted a new construction of the statute, that they had now decided that they were going to take the words of the statute literally, and if the demand for hearing was not actually "filed" by arrival at the particular Postmaster's office on or before the 15th day, this would be considered a default. I protested that even Internal Revenue Service, when it requires that you file a certain tax return by a certain date, considers you to be on time if your mailing envelope is postmarked on the day set for filing, and that the Post Office was now claiming that it could put me in default by being slow and inefficient in the delivery of mail to itself. My protests were to no avail. Annexed hereto are copies of my correspondence in this regard, which were sent.

AFFIDAVIT OF HERBERT MONTE LEVY

I might also perhaps add that I was extremely careful to always have my demand for hearing sent out on the date that the demand for hearing bore; that demand for a hearing was sent out, though it is not reflected in the "certified" file submitted by the Government, on the day indicated on the demand for hearing, (copy annexed) and there was thus absolutely no reason whatsoever why, in equity or logic, the Post Office took a default solely because of its own inefficiency in delivering mail to itself.

In this connection, I note also that in this very case, I took an appeal from the decision denying a hearing as evidenced by the correspondence annexed hereto. So far as my records now show, that appeal was never acted upon. Thus, this proceeding is being brought to enforce a PO while an appeal is still pending in the Post Office Department.

The above also demonstrates that the file submitted by the Government herein is woefully incomplete.

Though the notice of motion recites that it is proceeding upon an annexed certified copy of the record of the proceedings in the Post Office Department, there is absolutely no copy of any certification whatsoever

annexed to the papers that have been served upon defendant. Since no affidavit of any sort has been submitted with the Government's moving papers, there is thus simply no factual basis whatsoever upon which this Court can imply or find any fact whatsoever upon which to base the injunction that the Government seeks. Accordingly, this proceeding must be dismissed. However, on the bare possibility that there is a certification in existence and that an inadvertent clerical error resulted in no copy of the certification being served with the motion papers (though this is unlikely, in view of the fact that amongst the numerous cases in which summary judgment papers were served upon defendant, there is frequently an absence of such certification), we nonetheless go on to note the following, in regard to the merits of the Government's application.

Amongst the papers submitted to the Court is what purports to be a return receipt executed by defendant, for the particular prohibitory order involved in this case. However, there is simply nothing whatsoever to tie in that particular return receipt with the particular prohibitory order. In this connection, it should be noted that this particular defendant has

received approximately 200,000 Prohibitory Orders. The Post Office had issued approximately 325,000 Prohibitory Orders by December 31, 1969. Vol. III, Technical Report of the Commission on Obscenity and Pornography, p. 161. It would thus be the easiest thing in the world for the Post Office to have mixed up a particular prohibitory order with a return receipt for another prohibitory order, or with a return receipt for a complaint, or with a receipt for virtually any communication between the Post Office and the defendant, -- or between others -- and to have annexed that to the prohibitory order as the purported receipt for the particular prohibitory order. In the complete absence of any identification whatsoever of the return receipt being a return receipt for the particular prohibitory order, there is simply no proof whatsoever as to either the receipt of the prohibitory order by the defendant or of the date of such receipt. In the absence of proof as to receipt and/or date of receipt, obviously there can be no finding of a violation of that prohibitory order which would have become effective 30 days from the date of its receipt. Since there is no showing of

the fact of receipt or the date of receipt, it is thus impossible to show what was the effective date of the order, and therefore impossible to show whether or not there had been a violation by a second mailing, assuming at this moment that a second mailing had been made.

The Pandering Law, as it existed at the time of the alleged violation complained of here, did not require merely that a prohibitory order be issued as an order of the Post Office, or its present successor the Postal Service, but required that the prohibitory order be issued by the Postmaster General. In the case at bar, the prohibitory order was not issued by the Postmaster General.

In the case at bar, the prohibitory order was not issued by the Postmaster General, nor even by a local postmaster, nor even by an identifiable individual. On the contrary, it was signed by some anonymous individual, signing by initials only, or, if a name was given, where his status was completely undisclosed, even to this time. We know of no statutory or other authority pursuant to which a delegation was made to any such anonymous or virtually anonymous person; if

there exists any such delegation, by regulation or toherwise, we are completely unaware of any statutory authority for such delegation. Therefore, the original prohibitory was a complete nullity, and the entire proceeding must fall as being without a foundation, the Government's motion for summary judgment should be denied, and summary judgment should be granted to the defendant.

The prohibitory order completely failed to identify any person or persons to whom a second mailing should not be made. It was thus nothing but a completely nullity, since it did not prohibit a mailing to any specified person. It was totally unauthorized by the Pandering Law, and therefore, the Government's motion for summary judgment should be denied, the complaint dismissed, and plaintiff's cross-motion for an order requiring the striking of the prohibitory order should be granted.

We turn next to the problem of whether, even assuming that the record is properly certified and that the so called evidence of date of receipt of the second mailing was admissible, -- both assumptions

being purely for purposes of argument, -- a violation of the prohibitory order has been made out. We note, at the outset of this facet of the argument, that there is completely lacking any proof whatsoever of the date of the second mailing, that such date was never alleged, and that therefore the defendant was never accorded due process of law under the Fifth Amendment and the right to know the nature and cause of the accusation against it under the Sixth Amendment. Just as significant, however, is the fact that the second mailing bears no postmark whatsoever. Thus, the Government is forced to rely upon the statutory presumption found in Section 4009 (f), that a mailing received more than 30 days after the effective date of prohibitory order is presumed to have been sent in violation of the order. But, as we show in our brief, the effective date of the order is 30 days after it has been received, so that there is no presumption of a violation unless the second alleged mailing was allegedly received 60 days or more after the date of receipt of the prohibitory order.

AFFIDAVIT OF HERBERT MONTE LEVY

We come next to the question of admissibility of the evidence of the alleged date of receipt of the second alleged mailing. In view of the improper certification of the record, we do not see how such proof can be admissible in any event; it is completely unsworn to, and it is the rankest kind of hearsay. The Government, in its brief, has not attempted to sustain the admissibility of this evidence. We expect, however, that the Government will urge that, assuming proper certification, it is admissible under the Federal Business Records Act (28 U. S. C. Section 1732 (a)) as a record kept in the ordinary course of business, it being the ordinary course of business to keep such records. However, as we show in our brief, since the business involved is that of the Post Office, and the entries as to alleged dates of receipt were made by third persons, not by the Post Office, such rule does not apply. Moreover, even if such a rule did apply, in a normal case, it would not be applicable here, for this reason:

The normal reason for permitting evidence of business records to be admitted is that such records are inherently reliable. But in a prohibitory order-pandering case, we submit, such evidence is inherently unreliable. For several reasons, as follows:

AFFIDAVIT OF HERBERT MONTE LEVY

a) The type of person who goes to the time and trouble of going to the Post Office to obtain a prohibitory order rather than merely tear up the material which offends him, especially when -- as here -- he has been given notice of the contents of the envelope (see the right hand bottom of the mailing envelope), is obviously the type of person who is sorely offended by sexually oriented material, the type of person, indeed, who very well might, usually does, wish to see as much trouble caused to the mailer of such material as possible, even when, as here, the material involved has been held to be not obscene. This is graphically illustrated, despite all the hypocrisy of the Pandering Law, in the statement of one addressee, in this very case purportedly pending in this Court of United States v. Pent-R Books,72 C 606, where the addressee noted as follows on the notice (request) for prohibitory order:

> "I request more than this (see below). This form evades the real issue. I have no minor children in my home, but YOU know this literature is reaching homes that have minor children. I AM NOT CONTENT WITH MERELY STOPPING THIS TYPE OF PORNOGRAPHIC MAIL FROM REACHING MY HOME; I EXPECT THE POST OFFICE AND JUSTICE DEPTS. TO FLUSH OUT THE SOURCE OF THIS OBSCENE MAIL, GET HIM OR THEM IN PRISON, AND STOP ANY OF THIS STUFF FROM BEING MAILED OUT AT ALL."

Similarly, in another purportedly pending case, in the memorandum from the Post Office Dept. dated June 3, 1969, the Postmaster recites that the complaining addressee, Mr. Griffis,

> "...is very concerned about this type of literature in the mails and offers his assistance and cooperation in trying to rid the mails of it."

And this is very obviously the attitude of the Post Office.

b) There may be community pressure, pressure by Post Office officials, or even by the local Postmaster or postman to attempt to make out a violation of a prohibitory order in order to cause more trouble for the mailer, in this emotionally-charged situation. The defendant is precluded from obtaining an examination of the complaining addressee in order to determine this, and there is simply no way in which the defendant can ever obtain such information. But this has happened. Graphic and dramatic proof of this -- of a direct Post Office attempt to influence an addressee to set forth a false date of receipt of mail so as to be able to find a violation of a prohibitory order, -- was accidentally uncovered during a hearing in another case involving this very defendant.

AFFIDAVIT OF HERBERT MONTE LEVY

Thus, in the Post Office case entitled "In the Matter of: Violation of Prohibitory Order No. 633, issued against Pent-R Books, Inc., Respondent, on behalf of Thelma M. Moser, Complaining Addressee, by Postmaster, Phoenix, Arizona," Post Office Docket # R14-Pa64-633, Gary Langer, Esq., then of my office, at the Post Office hearing, asked to look at the original folder. Upon it being examined, Mr. Langer noted that in the file, there was a card, obviously prepared by the Post Office, the bottom of which purported to show the date of receipt reading:

> "On August 27, 1969, I, Thelma Moser, received from the Pent R Book (sic) a second letter",

apparently signed by Thelma Moser. But immediately preceding this legend, also obviously prepared by the Post Office -- which had failed, however, to cut it off -- appeared the following:

> "In order to make a case against this firm we must have signed statement as to date of delivery of the second letter. The date given is an estimated date, but will give us the correct waiting period to carry on this complaint. An envelope is supplied for your convenience and no postage is necessary."

A Xerox copy of the card is being filed with this Court in United States v. Pent-R Books, Inc., 69 C 1362.

AFFIDAVIT OF HERBERT MONTE LEVY

That this came from the Post Office is quite clear -- no one else would or could have given this "information" and supplied a postage-free envelope. The Post Office's clear motive was "to make a case against this firm (defendant)", and the date given was an estimated date, obviously "estimated" by the Post Office in order to give them "the correct waiting period to carry on this complaint." Thus, the alleged date of receipt of the second mailing in that case was a totally fictitious date that the Post Office itself "estimated" in order to show a violation. (How could the Post Office make an estimation of that which was not within its own knowledge?) It will be noted that the alleged date of receipt, August 27, 1969, was completely typed in on the same typewriter which had written the instructions, and was obviously not done by Thelma Moser. Filed in 69 C 1362 will be a photocopy of the transcript of the stenographic minutes of the Post Office hearing on this matter.

In the complete absence of any opportunity to cross examine Thelma Moser, or the Postal officials involved -- an opportunity constantly requested by us, but always denied in each and every case, -- the defendant is simply at the mercy of the Post Office, when the Post Office thus unilaterally

decrees the alleged date of receipt of the second mailing, to get a correct waiting period to carry on its complaint. The Post Office obviously picks a date convenient to show, in their legal judgment, a violation. How widespread this practice has been by the Post Office, it is impossible to determine. (We should also note that the Post Office has consistently taken the position that receipt of a second mailing more than 30 days after receipt of the prohibitory order presumptively establishes a violation; though this position is incorrect, it explains why the Post Office does not always suggest a date of receipt of the second mailing more than 60 days later.)

Of course, this shows that when the Government seeks equity here, it does not come into Court with clean hands. Its hands are despicably defiled by its covert attempt to frame the defendant in the Moser case, an attempt disclosed only through its carelessness in not cutting off the top of the card in this instance. While this is not one of the cases presently pending in which summary judgment is sought, the simple fact is that there is no investigatory tool whatsoever by which we can ascertain how widespread this practice is and was. Denied the right to confront and

examine a complaining addressee, which we contend is a denial of liberty and property under the due process clause of the Fifth Amendment and the denial of the right to cross examine and confront defendant's accusers under the Sixth Amendment, but with the proof of at least one attempted frame-up, we submit that the Government must either submit all of its complaining addressees and Postal Officials to confrontation and cross examination, or that equitable relief should be denied by the Court.

In my affidavit, I note that the Post Office hearing examiner sits as the witness, judge, and jury. An examination of the transcript of the minutes in the Moser case shows the vice of such multiple roles being combined in one person. The hearing officer was David S. Kelson, Esq., an attorney for whom I have the greatest respect and admiration. Yet even Mr. Kelson, when faced with indubitable proof of the Post Office framing a defendant, rose to the defense of his employer, the Post Office. It is, under the circumstances, a severe denial of due process to permit the same person to be witness, judge and jury, especially when he is employed, as here, by the same Department which makes the accusation of violation.

Thus, whatever exception there might be based upon inherent reliability of business entry records is totally lacking in this case. In this day of revelation after revelation of improper conduct on the part of highest Government officials, and with at least one Postmaster having been found out to attempt to obtain false statements as to date of receipts of second mailings, it would simply ludicrous to hold that there was any inherent reliability in the alleged statement by an addressee of the date of receipt of the second mailing.

The Government "proof" also fails, in that it appears, quite clearly, that the writing on the second alleged envelope is not the same writing as that of the complaining addressee, as appears from the fact that the style of setting forth the date is different on the request (Notice) for prohibitory order than on the second alleged mailing envelope -- one is given in the conventional American style of the month, followed by the date and the year, while the other is given in the Continental style of the day of the month, followed by the month and the year. Force of habit precludes a person from writing this two different ways on two different documents.

AFFIDAVIT OF HERBERT MONTE LEVY

The writings purporting to indicate receipt by the signatory contain what are apparently two different handwritings, one handwriting showing the alleged date of receipt, and one showing the signature underneath. Since these are in apparently two different handwritings, it is impossible to tell whether or not the date of receipt was perhaps inserted by the Post Office, rather than by the addressee himself. It may be that a trial would disclose this, with an opportunity to examine the complaining addressee, and hence summary judgment should be denied to the Government.

There is nothing whatsoever to tie in the return receipt for the alleged complaint with the particular complaint. Since, by June 30, 1970, according to Vol. III of the Technical Report of The Commission on Obscenity and Pornography, p. 160 the Post Office had issued more than 3,000 complaints, it was extremely easy for the Post Office to have erred administratively, and to have made the error of attaching the wrong return receipt to the complaint. Of course, as Mr. Schwartz admits, he may have made a mistake as well -- we all make mistakes. But there is simply not one scintilla

of evidence to show that this particular complaint was ever served upon the defendant. In a department which handled, as well as the complaints referred to some 200,000 orders against defendant and an estimated 750 complaints against it, it would be simply ludicrous to expect that mistakes have not crept in. But, in any event, in the complete absence of any evidence by affidavit or even by any notation giving the faintest connection between the return receipt and the administrative complaint, there is simply nothing whatsoever here to show that the complaint was ever served, or when it was served.

While the law as quoted in the Government brief now permits a complaint to be issued by the Postal Service, it is nonetheless true that the statute as it existed at the time of the issuance of the complaint in the case at bar required that the complaint be issued by the Postmaster General. So, too, with the order determining the violation. But in the case at bar, the Postmaster General did not issue the administrative order finding the violation, or any administrative order.

of evidence to show that this particular complaint was ever served upon the defendant. In a department which handled, as well as the complaints referred to some 200,000 orders against defendant and an estimated 750 complaints against it, it would be simply ludicrous to expect that mistakes have not crept in. But, in any event, in the complete absence of any evidence by affidavit or even by any notation giving the faintest connection between the return receipt and the administrative complaint, there is simply nothing whatsoever here to show that the complaint was ever served, or when it was served.

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AFFIDAVIT OF HERBERT MONTE LEVY

For the reasons stated in this affidavit, as well as for the reasons set forth in Mr. Schwartz' more generic affidavit, we submit that the Government's motion for summary judgment should be in all respects denied, and that our cross motion for summary judgment should be in all respects granted.

Sworn to before me this

6th day of November, 1973

HERBERT MONTE LEVY

GILSOM SAFDEYE
Notary Public, State of New York
No. 3425478
Qualified in Kings County
Commission Expires March 30, 19 75

1576a EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY.

POD did not prohibit mailing to any named person only POD mailing ...

POST OFFICE DEPARTMENT

COMPLAINT

In the Matter of Violation of Prohibitory Order No. 392-69
Issued Against

Pent-R Books, Inc.

P.O. Box 81

Brooklyn, New York 11223

and agents or assigns.

On behalf of:
H. J. Malaison
Complaining Addressee

P. O. Docket No. R 11-NO-39

Four asaner sent circuit 11/3/69 —HV

On the 17th day of April, 19 69, you received Prohibitory Order No. 392-69, copy of which is attached hereto, issued against you and your agents or assigns under authority of Title 39, U.S. Code, §4009, upon request of the above-named addressee.

Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:

1. By further mailings to the addressees listed in the order. See Exhibit attached hereto.
2. You failed to immediately delete from mailing lists owned or controlled by you or your agents or assigns the names of the addressees listed in the order. See Exhibit attached hereto.
3. ~~You or your agents or assigns have sold, lent, exchanged, or made other transactions involving mailing lists bearing names of addressees listed in the order. See Exhibit attached hereto.~~
4. Other (specify):

[Strike inapplicable items].

Any response to this Complaint or request for a hearing with respect thereto must be filed, in writing, ~~in the Office of the Regional Counsel, Post Office Department,~~ (Address) with the undersigned Postmaster, within fifteen (15) days after receipt of this Complaint. Attached hereto is copy of the Department's Rules of Practice relative to answering this Complaint and requesting a hearing in the matter.

NEW ORLEANS, LA. POST OFFICE & STATION OCT 13 1969 USPO

[POSTMARK]

Dated: October 13, 1969

Paul V. Burke
Paul V. Burke
Postmaster

New Orleans, Louisiana 70113
City State ZIP Code

POD Form 2153
May 1968

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

LAW OFFICES
OF
HERBERT MONTE LEVY
295 MADISON AVENUE
NEW YORK, N.Y. 10017
(212) 689-2220

November 6, 1969

William Lawrence, Esq.,
Assistant General Counsel
Mailability Division
Post Office Department
Washington, D.C.

Dear Mr. Lawrence:

Re: Post Office Docket Nos. R-11, H-64;
R-11, H-65; R-11-FWT-86; R-11-FWT-87;
R-11-FWT-85; R-11-FWT-81; and R 11 NO-39.

Again, I must appeal to you from hearing denials and/or orders in each of the above entitled matters. Please consider this as a notice of appeal and permit me to incorporate by reference all points previously made in prior correspondence in regard to similar matters as well as the following points below:

In regard to Sample, I note that client received complaint on October 20, that hearing demand was sent October 31, and that a hearing denial was made on November 3 -- only 14 days after the date of receipt of complaint. This, of course, is entirely illegal.

As to Dodge, the same dates exactly apply.

As to Kuehner, Baird, and Wheeler, each of the complaints in these matters was received by client on October 20 and orders were entered on each of these matters on November 3, 1969, again only 14 days from the date of receipt. In each of these, I, myself had prepared and mailed out a demand for hearing on November 3, in my secretary's absence due to illness, and had sent each of these air mail, so that they were mailed air mail on the 14th day after date of receipt, and were it not for the slowness of the post office, should have been received by November 4, the last day for filing. In regard to the last two matters:

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

I am unsure whether I am appealing on the same ground, since a thorough search of our records reveals no reciept of any complaint in either of these matters. Therefore, I do not know whether these are cases in which there really was an inadvertent default, or whether we did make a demand for hearing, and an order was entered because of delays in the mails. I am sending copies of this letter to all the Postmasters involved, and I should greatly appreciate it if you and the Postmasters involved in the last two matters could advise me as to whether they ever did receive a demand for hearing. If they did not receive such a demand, we ask that the inadvertent default be opened; if it is denied, we claim that this would be a denial of due process, as would the absence of any rule or regulation permitting the opening of an inadvertent default.

I should perhaps add that I was on trial during the week ending Oct. 31, 1969, defending in a federal conspiracy case, through Wednesday of that week, and that on Thursday of that week I had to prepare an application for a stay to Mr. Justice Harlan of the U.S. Supreme Court, the application for the stay being Friday, October 31, 1969, on which day I went to Washington to do so. Under these added circumstances, as in the ordinary circumstances, any default would certainly be excusable.

I also note that I found on my desk, upon my return from Court, a file with a type of label I do not use, marked "FREDERICK, Robert MIN-1258 (Prohib O #55-8168)", which seems to emanate from Minneapolis, with other papers which seem to emanate from your office. I do not know whether this belongs to your office, and was inadvertently sent to me by your office or by Minneapolis. In any event, I am sending it on to you -- and I, at any rate, shall excuse your default!!!

Sincerely,

Herbert Monte Levy

HML/mol

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

November 12, 1969

William Lawrence, Esq.,
Assistant General COunsel
Mailability Division
Post Office Department
Washington, D.C.

Re: Post Office Docket Nos: R 11-NO-39;
PH-69-7121-122; PH-69-7008-123;
PH-69-5237-124; R-11-FWT-88; R-11-FWT-89;
R14-PA-74; R14-PA73-608; R-11, H-64;
R-11, H-65;

I appeal to you, in each of these cases, from the Orders in the above matters. Please consider this as notice of appeal, and as incorporating by reference arguments previously made in correspondence in regard to such matters.

In the first four matters, I note that my Demand for Hearing was served by mail, by me personally, on November 3, 1969, and therefore should be considered as having been filed on November 4, 1969. In the first matter, the answer was sent air-mail by me on November 3rd.

In the fifth and sixth matters above, the form Demands were sent air-mail November 4, 1969, again by me personally.

In each of the cases referred to above, the date the material was sent by me was the day before the filing deadline, and the Orders were apparently entered on the filing deadline.

In the next two matters, form Demands were sent by me air-mail on November 4, 1969, as to Complaints which had been received on October 21, 1969. The last day for filing was November 5, 1969 in both cases. Nonetheless, Phoenix entered an Order on November 4, 1969, one day before the last day for the Demand to have been filed.

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

The last two matters involve Orders entered after the hearing denial; I had already appealed to you from the hearing denial in both these matters in my letter to you of November 6, 1969.

With kindest personal regards, I am,

Sincerely,

Herbert Monte Levy

HML/mol

P.S. I am sending copies of this letter to each of the Postmasters involved.

AFFIDAVIT OF RICHARD S. SCHWARTZ IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.

Defendant.
----------x

ANSWERING AFFIDAVIT OF RICHARD S. SCHWARTZ.

Docket #

72 C 606

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

RICHARD S. SCHWARTZ, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the Secretary of defendant PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. as well as of RAS ENTERPRISES, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment herein, and in support of defendant's cross-motion for summary judgment. I am fully and personally familiar with all the facts set forth herein.

AFFIDAVIT OF RICHARD S. SCHWARTZ

EXTRAORDINARY PRECAUTIONS TAKEN BY DEFENDANT TO AVOID OFFENDING RECIPIENTS OF ITS MAIL.

Upon the outside of all mailing envelopes sent by defendant, or upon the outside of an inner sealed envelope, there had always appeared a notice advising the recipient of the nature and content of the advertisement contained therein.* If the recipient did not want this material, he merely marked the envelope "Refused", as invited to by defendant, initialed it, and returned it to the postman or dropped it into a mail box which he was sure to pass sometime during the day, all at defendant's expense, after which defendant removed the addressee's name from its mailing list.

Defendant had thus avoided the necessity of an addressee viewing materials which he preferred not to be exposed to, unlike the requirements of the Pandering Law where, if the complaining addressee is to be at all honest, he must open and view the materials. We had also avoided the time

* This practice ceased in 1970, when the Goldwater Amendment to the Postal Reorganization Act of 1970 required the legend "Sexually Oriented Ad" to appear on the envelope or on an inner sealed envelope. Defendant then followed that law. See Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp.297 (E.D. N.Y. 1971).

consuming necessities inherent in the addressee obtaining the Prohibitory Order and following through for a complaint. We emphasize that defendant had always done this -- starting long before the effective date of the Pandering Law.

Defendant has thus always been extremely careful of the sensibilities of persons who might otherwise be offended. Incidentally, lest the Court think that the more than 200,000 prohibitory orders that have been received by the defendant seem excessive, we note that defendant has mailed perhaps more than 10,000,000 advertising pieces, and thus the percentage of prohibitory orders received by it from all its mailings is some 2%. And though some 200,000 people purportedly objected to our ads, more than 450,000 copies of the book advertised have been sold. We further note that the advertisements, involved herein, for "The Photographic Manual of Sexual Intercourse", have been ruled non-obscene and constitutionally protected by Judge Masterson of the U. S. District Court for the Eastern District of Pennsylvania, United States v. Stewart, unreported, Crim. No. 69-162,

AFFIDAVIT OF RICHARD S. SCHWARTZ

Order dated October 13, 1971. Under these circumstances, we note that if 39 U.S.C. §4009 or its successor be applied to the defendant, who is shown here to be engaged solely in publishing, selling and distributing materials protected by the First Amendment, with a warning notice described above, such application is unreasonable, arbitrary and capricious, repugnant to the due process of law clause of the Fifth Amendment and to the First Amendment, and deprives defendant of liberty and property without due process of law and constitutes an unreasonable, capricious and arbitrary restraint on First Amendment rights, especially in view of the severe limitations on First Amendment rights necessarily encompassed in any attempt to avoid a conflict with 39 U.S.C. §4009 -- as we shall show below. For the price of compliance with §4009, as we note below, is that many mailings cannot be made to persons who wish to receive such mailings, and therefore the statute prevents mailings to persons who desire to receive them, thus interfering with their -- and defendant's -- First Amendment rights -- a possibility never considered by

the Supreme Court of the United States in Rowan, a case which was instituted in the early days of the Pandering Law, without any opportunity whatsoever for the Supreme Court of the United States to have any but the sketchiest information on how the law worked out in practice.

SINCE THE DEFENDANT HAS NEVER WILLFULLY VIOLATED A PROHIBITORY ORDER, AND SINCE THE DEFENDANT HAS TAKEN ALL POSSIBLE PRECAUTIONS TO AVOID SECOND MAILINGS, INCLUDING DEPRIVING PERSONS WHO WISH TO RECEIVE ITS ADVERTISEMENTS OF THE RIGHT TO DO SO, AND SINCE DEFENDANT NOT ONLY DOES NOT THREATEN TO MAKE AN ADDITIONAL MAILING BUT HAS MADE IT VIRTUALLY HUMANLY IMPOSSIBLE TO DO SO, AN ORDER SHOULD NOT ISSUE ENFORCING THE PROHIBITORY ORDER.

The so-called Pandering Law went into effect on April 14, 1968. At that time, no one knew for certain what its operation and effect would be. But after more than 5 years of experience with this law, the defendant knows, and shall hereinafter demonstrate to this Court, that this law cannot be complied with except by disregard of defendant's own First Amendment rights -- which defendant has had to disregard in order not to be in conflict with the law. We thus claim that the law, so construed and applied, in its operation and effect, does violate the First Amendment.

AFFIDAVIT OF RICHARD S. SCHWARTZ

At no point whatsoever did defendant ever willfully make a second mailing in violation of a prohibitory order; at the present time, and for at least the last three years, because of the computerization that the defendant has used, we submit that not only does defendant have no intent of violating the prohibitory order here, but it could not do so even if it wished. It is our contention that in the complete absence of any willfulness in the second alleged mailing, plus the fact that there cannot be a willful mailing hereafter, an order of this Court should not issue.

As we shall show in some detail at length below, there is no doubt of defendant's good faith and diligence in attempting to comply with the Pandering Law. The cases involved here all deal with second alleged mailings in 1969, in which year Pent-R made about 10,000,000 mailings. But long prior to the 1968 effective date of the Pandering Law, we had set up a computerized system, solely in order to be able to completely comply with the terms of the law. That system was set up by the President of defendant, Ronald A. Stewart,

with my assistance, through arrangements made with a computer house and a system was devised as shall be set forth below. The cost of running that computer operation in the year 1969 was some $62,068. We are advised by the computer house, that it now estimates that it used the services of the equivalent of 25 people working full time for 6 months -- which it computes as the equivalent of one person working 3000 days, or 24,000 man hours -- in order to set up and process the system. As we note at length below, difficulties were encountered because of the use of rented lists, and rented lists were finally abandoned unless they were on computer tape, where the computer could prevent second mailings. The computer operation became more and more refined as we had more experience with it. The use of duplicate mailing labels was eliminated in 1970, when it was found that this resulted in violations of prohibitory orders. The system itself was finally programmed in 1971, and is still carefully programmed, to guard against second mailiings to such an extent that the computer eliminates even mailings

that have not been prohibited. Thus, as we learned of mistakes which took place, we corrected them at once, and took vigorous steps to prevent recurrence of these mistakes or further mistakes in the future. The new system of control greatly improved the situation. It is and has been as nearly perfect as a system can be.

Even originally, as we first set up the computer programming, we had a great rate of success with it. Thus, although we received something more than 200 000 prohibitory orders, the complaints of violation which have so far been upheld by the Post Office -- which bends over backwards to be fair to itself, -- number only approximately 500. Thus, even giving the Post Office the benefit of every doubt, even now the Government charges that only some one quarter of one percent (0.025%) of the prohibitory orders issued to Pent-R were violated. Moreover, every time we have received a complaint from the Post Office, we have once more fed the name and address of the complaining addressee into the computer, so that no further mailings would be made to such complaining addressees. We have fed these names and addresses into the computer for a <u>third</u> time upon receipt of a Complaint filed in this Court.

AFFIDAVIT OF RICHARD S. SCHWARTZ

Even if an injunction were issued in this case, it would and could have no effect by way of insuring better compliance in the future. With all the efforts we have made, it would be unjust to us to do so, in view of our good faith, and not in the public interest.

Actually, our success ratio is even better than the figure of 1/4 of 1% violations -- or 99 3/4% compliance. Thus, we note the following: All mailings for defendant were handled by another corporation, RAS Enterprises, Inc., of which Mr. Stewart is again the President and I am again the Secretary, as here. The mailings made by RAS Enterprises, Inc. are almost all of a nature that some would undoubtedly find erotically arousing or sexually provocative, so that the mailings of virtually every other corporation which had been processed by RAS have resulted in prohibitory orders. However, though we estimate that Pent-R, plus all the other corporations serviced by RAS (including RAS itself) have probably had approximately 248,500 prohibitory orders issued against them, there were only seven administrative complaints of violation issued in the first half of 1972, none in the second half of

1972, nor in the first 6 months of 1973. Since then, there have only been three administrative complaints, all issued against an affiliated division of RAS, Companion Products; no material whatsoever was furnished in regard to one of the complaints, so we are at a loss to know whether or not it was justified; in the two cases where some materials were annexed to the complaint, it is perfectly clear that the prohibitory order was not violated. Thus, though there are approximately some 248,500 prohibitory orders issued and outstanding against all such corporations, there have been only some 10 administrative complaints of violation between January 1, 1972 and date -- an alleged violation rate of less than 0.004%*. Our computer house has estimated the expected rate of computer error to be 1/2 of 1%, so that

---

* This rate assumes that all ten administrative complaints were valid. Since we know that at least two of them were invalid, we have at most eight valid complaints,(only one of which was received after July 1, 1972); assuming the eight are all valid, the violation rate since January 1, 1972 is cut from 0.004% to 0.003%.

it is plain that, by falling below this rate of error, defend-and (and its computer house) have done a superlative job. There is simply nothing else that we can do, of which we are aware, to avoid offending against the statute. Our good faith effort to comply with the law is perfectly clear. I now detail the course of our computer campaign.

Of course, before the Pandering Law became effective in 1968, defendant had tooled up in order to be able to comply with it. It immediately, upon receiving its first prohibitory order, began to comply with the law, in the following way.

After a prohibitory order was obtained in the Post Office, it was opened by defendant, and dated with the date of receipt (subject, of course, to error -- a lot of them in the beginning, where we failed to put on the date of receipt). A photocopy of each prohibitory order was made, which was sent to the computer house, or "Listing House", while defendant retained the original for its files. At the computer house, the names and addresses of persons to whom mailings should not be made, as they appeared in the ordering part of the prohibitory orders, were typed. These were then read by a device known

as an optical scanner, whose function it is to translate the written material into electrical impulses which are put, and then stored upon, a magnetic tape, in a symbolic form. The Pent-R mailing list was put up on a tape itself. When a name appearing on a prohibitory order also appeared on a tape for the Pent-R mailing list, the matching of the two tapes would prevent that person's name from being printed out by the computer on the mailing list which the computer prints out. At the same time, these were sorted out by zip codes.

Two problems became apparent. The first problem was with rented lists. The mailing lists, owned by, sold to and rented to defendant were and are lists of names and addresses of intellectual, mature adults who had previously received from others, similarly situated to the defendant, advertising or other materials similar to those disseminated by defendant. They were and are mailing lists of names of persons such as doctors, dentists, attorneys, accountants, druggists and other professional people, and owners or proprietors of various businesses thus assuring as much as possible that none of the

addressees were or are minors. Because of their nature, many of such mailing lists owned by defendant, and those rented or purchased from others by defendant and others, overlap, and the names of the same persons frequently appear on both such lists.

In view of the many prohibitory orders received by the defendant, it was physically impossible to visually compare, by human vision, the names of addressees thereon with the names in any lists rented by the defendant, especially since the names on rented lists were usually listed in random rather than in alphabetical order. Since the use of an optical scanner and computer to eliminate names on a list involves the copying of the names (by their translation into symbols stored on the magnetic tape), and since the owner of the rented list will not permit that list to be copied, the defendant found that it was impossible, simply impossible, for it -- or others -- to comply with a prohibitory order insofar as the use of a rented list is concerned.

AFFIDAVIT OF RICHARD S. SCHWARTZ

Moreover, many mailing lists were not available for purchase, being available for rental only, no matter what the price. When a list is sold, the price is many times the rental charges. The operation and the effect of the statute has been that, after defendant learned that it could not comply with the law and also use a rented mailing list, the defendant was forced to abandon the use of most rental mailing lists. It could only use a rented mailing list if and when the owner of such list had himself put the list on magnetic tape, so that the computer could be used to check off the names of persons as to whom prohibitory orders were issued and outstanding. Thus, the defendant has been forced into the position where it can mail to persons on mailing lists, which are available for rental, only if and when such lists are on tape. The defendant has followed this practice since 1970. Defendant estimates that, because of this limitation, it and the corporation which processes its mailings, and which now owns its mailing lists -- RAS ENTERPRISES, INC. -- have been deprived of the right to mail to somewheres between 5,000,000 and 10,000,000 persons. Even allowing for a

20% of overlap of names on mailing lists already used with those on such rented mailing lists, the operation and effect of the statute has been to prevent mailings for First Amendment materials to approximately 8,000,000 persons within the United States within the last three years.

Further, in this connection, we note that on occasion, the rented mailing lists would not be delivered to the defendant or its computer house, but the owner thereof would insist upon having names and addresses on such list printed or typed by itself or others and sent to separately owned letter shops or mailers where the material to be mailed is inserted in the envelopes, or is otherwise packaged, and mailed. We have included in our estimate above such mailing lists which also are obviously unavailable to the defendant, because of its effort to comply with the Pandering Law.

We submit that the Pandering Law was not intended to apply to a second mailing made to a name on a list rented by the sender. If it was intended to so apply, then defendant, who had exercised the greatest care, would be deprived of liberty and property without the due process required by

the Fifth Amendment, since the only way to avoid second mailings to a name on a rented list is by so limiting the use of rented lists as set forth above, and thus effectively restricting the freedom of speech and press of the defendant herein.

There was a second problem which became apparent. In order to print out an entire protester-free list, the list would have had to be printed out anew at least once every 30 days. This particular aspect of the matter itself would have cost at least a minimum of $18,000 per year. To circumvent this cost, three carbon copies of each print-out were acquired at the comparatively nominal costs of $2.00 per 1,000 names. If the mailing label on the second alleged mailing is identical to that on the first alleged mailing, this occurred because the mailing was made due to the second mailing having been made before a new protester-free list could be printed out, it being impossible and illogical to coordinate dates of mailing with the effective dates of prohibitory orders.

AFFIDAVIT OF RICHARD S. SCHWARTZ

Accordingly, in order to comply with this unconstitutional provision of the law, the use of carbon copies of mailing labels was abandoned by defendant in 1970.* Thus, the law unreasonably and substantially illegally prohibited the use of the mails for First Amendment purposes.

A third problem which was run into was that the optical scanner cannot exercise any judgment. Thus, if the name appearing on the prohibitory order was R. A. Jones, but the mailing list contained the name of Richard A. Jones, the computer would simply not recognize the name.

---

*Such use has recently been resumed, but only to the limited extent that carbon copies are made of names and addresses only of those who have bought from us, as to whom the Pandering Law does not apply, Cf. Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp. 297 (E.D.N.Y. 1971). And in any event we have finally worked out a method for their use anyhow, so as to still comply with prohibitory orders.

To avoid this problem, and similar problems, the only way to prevent second mailings was to so program the computer that all persons with the same last name at the same address should not get mail. This was done in 1970.

Of course, the slightest variation of an address would have rendered this an illusory protection; thus, if our attorney's wife Marilyn W. Levy, Esq., who at about that time had an address of 1133 Sixth Avenue, had appeared on a different mailing label as having an address of 1133 Avenue of the Americas, New York City -- the same actual address, but different to a computer -- a mailing to her could not have been prevented.

In the meanwhile, the Supreme Court of the United States had upheld the constitutionality of the Pandering Law though, as we noted, without any knowledge of the operation and effect of the law. The defendant, even though it had pioneered the way in presenting a method by which an unwilling recipient could get its name removed from its mailing list without any expense and minimal effort, had to even further circusmcribe its own First Amendment rights in order to even better comply with the law.

AFFIDAVIT OF RICHARD S. SCHWARTZ

To even better comply with the law, an improvement was made on or about November 14, 1970. Under this new system, the computer sought out the first five letters of the last name of the addressee, and automatically removed from the mailing list the name of any person at the same address who has the same first five letters in his last name -- even if such other persons had requested mailings from the sender, and even if their first names were different and were in fact different people. Thus, if one Murray Schwartz at 295 Madison Avenue, New York City, had obtained a prohibitory order, the computer would have automatically prevented mailings to all persons at that address the first five letter of whose last name are SCHWA. Thus, in order to comply with the law, mailings to Irving H. Schwartz and Herman Schwartzman as well as to Schwartz, Schindler & Levy, all existing persons or firms at that address, would have been prevented.

Thereafter a still further improvement was made, effective in the Spring of 1971. This eliminated from the RAS mailing lists the names of all persons as to whom the

following three factors also appeared in the Government list supplied under the Goldwater Amendment or in the names supplied by the Prohibitory Order:

A. The first five letters of the last name coincide.

B. The first three digits of the street address coincide, and

C. The zip codes coincide.

Thus, in addition to weeding out the names and addresses of the persons mentioned above, all persons within the zip code area (10017) whose last names began with SCHWA at any address in that zip code area which began with 295, would be eliminated from the RAS list. Thus, any Schwartz, Schwartzman, Schwartzberg, Schwarz, etc. at 295 East 42nd or 295 East 41st, etc., etc., would not receive mail, even though some of such persons might be customers.* The problem is also

* Our computer house has advised us that at Co-Op City, a gigantic housing development in New York City which our computer house programmed, there were last names duplicated in 35-40% of the cases. We note that should a Schwartz in Co-Op City obtain a prohibitory order, many hundred (possibly several hundred) other Schwartz's in Co-Op City could not get a mailing from us -- and that this would continue perpetually even after the one objecting Schwartz moved out.

solved of preventing a mailing to say,1133 Avenue of the Americas, when the address we were given was 1133 Sixth Avenue, since the numbers of the street address control. We have thus succeeded in avoiding the type of problem set forth in the annexed page from "Popular Photography."

Of course, there is still opportunity for error. A mistake may be made by the typist who types up the material for the optical scanner, in putting down the name and/or address; a mere speck of dust on a computer tape may prevent the elimination of one or many names. It is estimated that there will be a computer error factor of one half of one percent (0.5%) which cannot be eliminated. (The Government, indeed, has made many errors in the tapes it supplied RAS under the Goldwater Amendment).

I should perhaps also add that when we receive a complaint of a violation of a prohibitory order, we once again feed the name and address of the addressee into the computer, even though in almost all probability it is already on our tapes, and though the second mailing was due to matters beyond our control (e.g., the second mailing was to a new address when the Postal Service had only ordered cessation of mailing to an old address).

AFFIDAVIT OF RICHARD S. SCHWARTZ

That our program seems to be working is evident from the fact that in November, 1971, only four complaints were issued -- one of which seems to be explainable only by computer error, two of which were caused by Post Office error, and one of which cannot be explained because we have not been furnished with sufficient documentation, according to advice from Herbert Monte Levy, Esq., our attorney. In October, 1971, only one complaint was received. So, too in September, 1971.

Thus, all of the corporations having their mail processed by RAS Enterprises, Inc. including that of Pent-R Books, Inc., in order to comply with the law, have taken precautions which result in elimination of mailings even to persons who may desire such mailings. We would estimate that that would include some 50,000 persons.* Under such circumstances, in addition to the clear violation of its

* This does not take into account persons in the Armed Forces who may be deprived of mailings, it would seem that one person named "Smith" or "Jones", by obtaining a prohibitory order, would effectively preclude all persons with such a respective last name at such APO address from receiving any mail from us. We have no idea how many persons have the same APO address; we are thus unable to come up with a figure for this problem.

First Amendment rights, it is further clear that there would not or could not be any willful violation of a prohibitory order. Accordingly, it would seem that this case would be moot, because any judgment, when rendered, could not have any practical legal effect upon the then existing controversy. Indeed, there is simply no controversy here.

To further note the good faith of defendant, we note that, as already stated, Pent-R did attempt to comply with all prohibitory orders, constantly tightening its preventative measures designed to insure that mail would not reach those who did not want to receive its mail. Moreover, when the Goldwater Amendment came into operation, requiring that publishers disseminating sexually oriented advertisements must subscribe to a list of persons who did not want to receive such ads, defendant was the first -- and for a long time the only -- subscriber to that list, which subscription cost it

$10,000 a year.* While continuing to comply with that requirement, Pent-R tested the statute before a three Judge Federal Court; during the course of those proceedings, the Government constantly modified its regulations, under the Goldwater Amendment so that that case was rendered moot and dismissed. One of the modifications followed Pent-R's practice, begun long before the statute was enacted or became effective, of giving a warning notice of the type of contents on an inner sealed mailing envelope. Pent-R Books, et al v. U. S. Postal Service, 328 F.Supp. 297 (1971). To further put this matter in context, we note that although some 200,000 prohibitory orders were issued against Pent-R, only approximately 750 complaints were ever made under the Pandering Law, according to the estimate of our attorney and the informal estimates

*In analyzing the first such list supplied by the Government, we ascertained that 621 names on that list of 31,604 names had bought sexually oriented materials from one of the plaintiffs there on one, two, three or four occassions previously. Thus, some 2% of those on the Government list are prior buyers. Since the Government list includes names of children, if we assume 2.5 children per adult name, then some 5% on that list were prior buyers from plaintiffs there. We cannot even estimate how many on that list were prior buyers from other sources of supply. This further demonstrates Mr. Levy's thesis that persons are pressured into acting to avoid the receipt of ads for sexually oriented materials.

of Postal Service officials -- an alleged violation rate of 0.375% at most. Of the some 750 cases in which hearings were held, approximately 1/3 of these resulted in dismissal in the complaint, while approximately 500 of the cases so far have resulted in the complaint being upheld by the Post Office, with or without a hearing, or some alleged 1/4 of 1% (0.025%) of alleged violations.

The defendant is a thoroughly law abiding corporation. We would estimate that it has spent by this time at least some $300,000 in order to comply with the Pandering Law, as well to comply with the Goldwater Amendment. Its vast expenditures of money, made in an effort to comply with the law, show that it is not a law breaker, but a law observer. To issue an injunction in any case such as this, which has become completely moot by the use of such a computerized method that not only are mailings to protesters avoided, but also mailings to persons who are not protesters, would be to have the Court issue a useless order -- and an unconstitutional one at that.

I understand that it is hornbook law that a statute must be construed so as to avoid raising questions of constitutionality. We believe that we have raised substantial

questions as to constitutionality in the operation and effect of the Pandering Law -- not involved in the Rowan case --, which must be faced if this Court is to issue an order. Succinctly stated, it is a fact that the law cannot be complied with except by denying the defendant its right to communicate to those who would receive its communications, and the right of those who receive such communications to receive them. We submit that the law should be so construed in this case as to mean that there is complete mootness in the case at bar, in order to avoid the raising of these questions.

We have bent over backwards to make any possible settlement with the Government. It has never suggested any deficiency in our computerized system for compliance with prohibitory orders. It has never suggested any improvement. Since 1971, at least, it has been fully informed of our system's working. What more does the Government want from us? Our standard of attempted compliance, our actual rate of better than 99 3/4% compliance with prohibitory orders, speak for themselves. No injunction need be granted. It could

have no possible effect whatsoever. Any practical suggestions for improvements in our computerization program will be gratefully accepted. Can we do more?

I now turn to some details.

I understand that according to the purported so called certified file in this case, the purported return receipt for the administrative Post Office complaint is dated However, as noted above, it was our practice and remains our practice to stamp or otherwise indicate on the envelope in which the complaint was contained, the date of its receipt by us. The date of its receipt by us, according to the envelope, which will be annexed hereto, is October20,1969,though the date of receipt according to the purported return receipt is October 17, 1969. If we are correct in our date of receipt, then it is patent that the demand for hearing, which our attorney's affidavit indicates was sent on the date it bears, was sent in time, and that we were improperly denied a hearing before the Post Office Department in this case, a default having been taken without just cause. This raises an issue of fact warranting a trial.

AFFIDAVIT OF RICHARD S. SCHWARTZ

A comparison of the way in which the first mailing was addressed, that is, the physical set up thereof, to the way in which the second mailing was addressed, clearly demonstrates that the second mailing was to a name on a rented list. This is obvious because of the differences; had the second mailing been to the same mailing list as the first, the two mailings would have been identical, letter for letter, type style for type style. Since they are not so identical, it is plain that one of the mailings, probably the latter, was to a rented list. For the reasons we have set forth above, we do not believe that a prohibitory order can be violated, constitutionally, by mailing to a name on a rented list.

AFFIDAVIT OF RICHARD S. SCHWARTZ

WHEREFORE, deponent prays that the plaintiff's motion for summary judgment be denied, that defendant be granted summary judgment dismissing the complaint, and that the prohibitory order be vacated.

RICHARD S. SCHWARTZ

Sworn to before me this
8th day of November, 1973.

GILSOM SAFDEYE
Notary Public, State of New York
No. 34[illegible]478
Qualified in Kings County
Commission Expires March 30, 19...75

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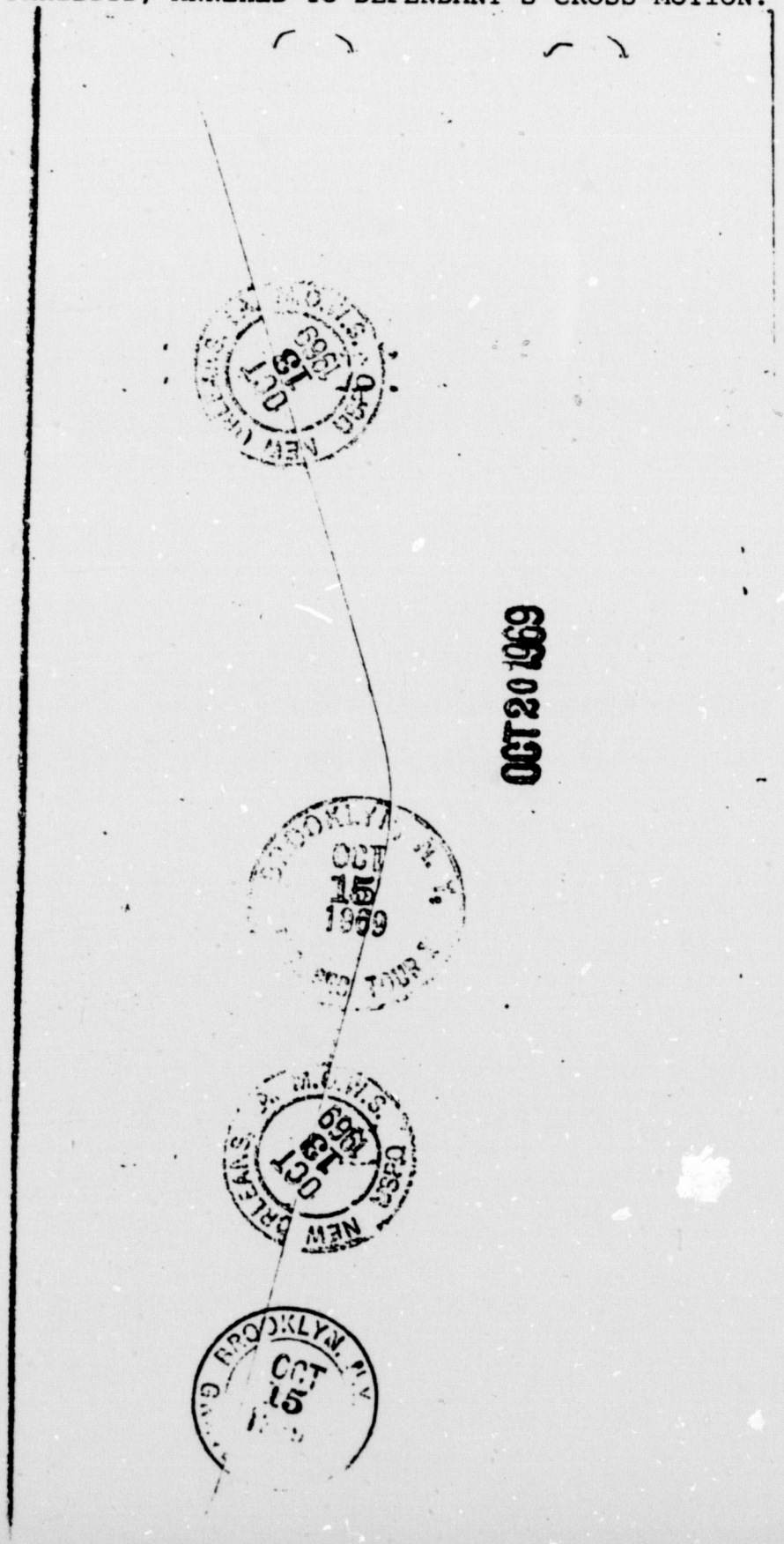

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OFFICIAL BUSINESS

P-192

PENALTY FOR PRIVATE USE
PAYMENT OF POSTAGE

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RETURN RECEIPT REQUESTED

REGISTERED
NO. 14481

Pent-R Books, Inc.
P.O. Box 81
Brooklyn, New York 11223

ADMINISTRATION OF 39 U.S.C. 4009

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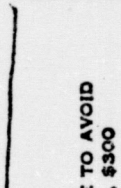

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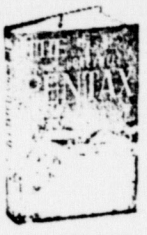

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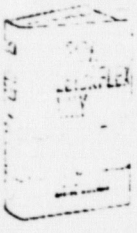

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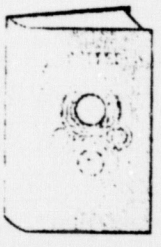

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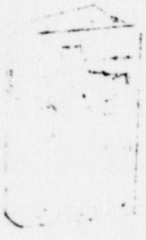

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NEWSFRONT *continued from page 14*

in convention here that Kodak is trial marketing three-solution process for color prints. It may replace present five-solution process. Kodak is concerned about water pollution and silver waste. New process "reduces effluent volume by 40 percent," has bleach-fix that is "completely biodegradable, can be regenerated and allows efficient silver recovery." Seiler said company is working hard to make non-toxic chemicals and cut level of BOD_5. He said Kodak has managed to formulate Ektaprint C stabilizer without zinc, another potential pollutant.

NEW YORK—*Our man Rothschild to speak at communication parley*: Among panelists at 15th annual Wilson Hicks International Conference on Communication Arts (formerly Miami Conference) will be *Popular Photography*'s senior editor, Norman Rothschild. Other participants at meeting, slated for April 28-30 at U. of Miami, Coral Gables, Fla., include Gilbert M. Grosvenor, editor and vice president of *National Geographic*; Erich Hartman of Magnum; Richard Grossman, president of Grossman Publishers; Tony Vaccaro of *Look*; Inge Morath, free-lance photographer and wife of playwright Arthur Miller; Burton McNeeley, undersea photographer; John Schearer, free-lance photographer; Larry Schiller, film maker; Paul Hue, photographer from Holland; Martin Duffy, manager of design and media for A.T.&T Co.; Marcello Ablaza, official photographer to the president of the Phillippine Dr. Wesley Clark, dean of the School Journalism, Syracuse University; and John Olson, staff photographer of *Life*. Conference also serves as annual meeting for American Society of Magazine Photographers.

NEW YORK—*With deep regret, we note the following deaths*:

Charles Rado, founder and president of Rapho Guillumette photo agency that represents photographers throughout the world. Rado often fostered work of unknown photographers, many of whom were exhibited at Museum of Modern Art.

Dr. Emanuel Goldberg, scientist, author, and retired director general of Zeiss Ikon AG. He emigrated from Paris to Israel, where he founded laboratory for applied optics, now known as EL-OP. He wrote *The Fundamentals of Reproduction Technique* and *The Structure of the Photographic Image*.

A. Aubrey Bodine, photo director of *The Baltimore Sunday Sun* magazine, and winner of hundreds of international photo awards. He had worked with *The Sun* papers for nearly 50 years. Many of his best pictures appeared in *My Maryland*.

Kyoichi Sawada, U.P.I. photographer, killed in Pnompenh, Cambodia, while covering the war. He won Pulitzer Prize in 1966 for picture of Vietnamese mother fleeing enemy attack. ○

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

AFFIDAVIT

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.
----------x

STATE OF NEW YORK)
:ss.:
COUNTY OF KINGS)

HYMAN GOLDMAN, being duly sworn, deposes and says that:

I am and at all times from 1968 to date have been employed by PENT-R BOOKS, INC., sued as PENT-R-BOOKS, INC. herein, as a messenger. Accordingly, I was the person who most often went to the Post Office to pick up registered mail, which was held for defendant at the Post Office Registry window. I have been asked to describe the way in which this was handled. I now do so.

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION

When I asked to sign a return receipt, it was not my practice to write down the date on the return receipt on which the material was received. This would usually be written, by stamp or otherwise, by the Post Office employee behind the Registry window. Sometimes this was done while I was waiting, at other times dates were stamped on some receipts after I had signed them, or while I was still signing other receipts. At still other times, the person behind the window would stamp the date of receipt, I assume, after I left, for such person had not stamped the receipts with the date prior to to my leaving.

I did not have an opportunity to always see what material I was getting before I signed for it. On numerous occasions, particularly when a lot of registered mail was received, -- as was the case in 1969 particularly --, I was on many occasions given a batch of return receipts to sign at the same time, or a manifest sheet listing numerous items. Only after I signed them would I then be given the materials that I had supposedly signed for. Thus, on numerous occasions, I had no opportunity whatsoever to check to see whether all of the material for which I signed had been received.

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION

There were of course many opportunitities for errors. Thus, the person behind the window could have put on the wrong date of receipt; I might not have been given a mailing piece for which I signed; I might have been given a mailing piece for which I signed one or more days after the date on which the receipt was supposedly stamped. And the opportunity for errors to be had was aggravated by the fact that, in 1969, there were frequent occasions when I had to sign for between 30 and 50 mailing pieces at the same time.

Thus, the fact that a return receipt bears a particular date does not necessarily prove that it was received by Pent-R Books, Inc. on the date that the return receipt shows.

Hyman Goldman
HYMAN GOLDMAN

Sworn to before me
this 2nd day of November, 1973.

Gilsom Safdeye

GILSOM SAFDEYE
Notary Public, State New York
No. 24
Qualified in ty
Commission Expires , 19..75

MEMORANDUM AND ORDER BY DOOLING, D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

-against-

PENT-R-BOOKS, INC.,

Defendant.

- -X

72 C 606
(MOLAISON)
MEMORANDUM
and
ORDER

Appearances:

LLOYD H. BAKER, Esq. (DAVID G. TRAGER, Esq., United States Attorney, of Counsel) for Plaintiff

HERBERT MONTE LEVY, Esq., for defendant

DOOLING, D. J.

In this action to obtain an order commanding compliance with a Post Office Prohibitory Order issued under 39 U.S.C. § 3008 (formerly § 4009), the plaintiff has moved for summary judgment on the administrative record, and defendant has cross moved on affidavits. The principal objections of defendant are those raised and disposed of in 69 C 1362, 72 C 609, 69 C 1290, and 72 C 588, and what has been said in those dockets need not be repeated here.

Particular to this case are two contentions:

The first is that a request for hearing was air mailed to

New Orleans on October 3, 1969, the day before the deadline date computed by defendant, and was ignored as late. But defendant's computation requires rejection of the date on the registered mail receipt (on the basis of the nugatory Goldman affidavit) and acceptance of the date that defendant says that it was its practice to stamp on registered mail envelopes when received. There is no basis for electing such a rejection in a case that does not (because of the multitude of featureless transactions involved) admit of helpful oral testimony from actual participants in the transactions. The receipt date is congruent with the Post Office date stamps on the envelope, and defendant's asserted date is not.

The second point is that the Prohibitory Order of April 14, 1969, had no name inserted in the name-space following the decretal language ("refrain from ... further mailings to the following parties at the indicated address," underscoring supplied), but the order had inserted in that space only the address. If it were possible to say that the blunder could have misled the mailer, there would be much to the point, of course. But "H.J. Malaison," at the same address, is given above on the form as the person to whom defendant had mailed

the first letter, and, hence, omission to insert the name below could not leave defendant in any doubt about the command of the Prohibitory Order with respect to <u>further</u> mailings.

It is, accordingly,

ORDERED that plaintiff's motion for summary judgment is granted and defendant's cross motion is denied. A separate form of judgment is approved for entry.

Brooklyn, New York
July 23, 1974.

U. S. D. J.

JUDGMENT.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ JUL 24 1974 ★
TIME A.M.
P.M.
CLOSED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

-against-

PENT-R-BOOKS, INC.,

Defendant.

- -X

72 C 606
(MOLAISON)
JUDGMENT

M'FILMED

This action came on for hearing on the cross-motions of the parties for summary judgment before the Honorable John F. Dooling, Jr., District Judge, and the motion of plaintiff having been granted and that of defendant having been denied in the decision duly rendered, it is

ORDERED and ADJUDGED that defendant PENT-R-BOOKS, INC., its agents and assigns (1) refrain from any further mailings to H.J. MOLAISON, 5531 Marshal Foch Street, New Orleans, Louisiana 70124, or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder or resident; (2) immediately delete

JUDGMENT

the above-named party from all mailing lists owned or controlled by it, its agents or its assigns; and (3) immediately abstain from any sale, rental, exchange or other transaction involving mailing lists bearing the name of the party named above.

Brooklyn, New York

July 23, 1974.

Approved:

U. S. D. J.

CLERK

UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF NEW YORK.

----------X

UNITED STATES OF AMERICA,

Plaintiff,

v.

PENT-R-BOOKS, INC.,

Defendant.

----------X

CIVIL ACTION NO. 72C 610.

DOCKET ENTRIES

U.S.A. v. PENT R BOOKS INC.

72C 610

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
5/9/72	Complaint filed. Summons issued.	JJS
5-26-72	Summons returned and filed. Deft srvd 5-25-72.	2
9-27-73	Pltff's notice of motion ret 10-15-73 and memo in support of motion for summary judgment filed.	3/4
11-29-73	Notice of cross motion and memorandum in support of deft's cross motion for summary judgment filed.	5/6
7-29-74	By DOOLING, J. - Memorandum and order dtd 7-26-74 granting pltff's motion for summary judgment & directing Clerk to enter judgment filed.	7
7-29-74	JUDGMENT dtd 7-29-74 granting permanent injunction against deft filed.(p/c mailed to attys) mm	8
9-19-74	Notice of appeal filed. Duplicate mailed to C of A & pltff. jn	9

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R-BOOKS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - X

NOTICE OF MOTION

72 C 610

PLEASE TAKE NOTICE that upon the annexed certified copy of the record of the proceeding in the Post Office Department, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a term for the hearing of motions to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, Courtroom 8, on the 15th day of October, 1973, at ~~9:15~~ o'clock in the ~~fore~~afternoon of that day, or as soon thereafter as counsel may be heard, for an

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

order pursuant to Rule 56 granting summary judgment to the plaintiff, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: Brooklyn, New York
September 26, 1973

ROBERT A. MORSE
United States Attorney
Attorney for the United States
of AMERICA

By:

Lloyd H. Baker
Assistant U. S. Attorney

TO:

HERBERT MONTE LEVY, ESQ.
295 MADISON AVENUE
NEW YORK, NEW YORK 10017

1624a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS.

GC 6845

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT

Washington, D.C. 20260

March 31, 19 70

CERTIFICATION

I hereby certify that the annexed documents constitute true copies original records which are in the official custody of the Post Office rtment, to wit: P. O. Docket No. R-15 P-177 (E. R. Oetken).

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, on the day and year first above written.

I. F. Kardos
Deputy Assistant General Counsel
Mailability Division

POD Form 215
Mar. 1970

1625a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

ORDER

In the Matter of Violation of Prohibitory Order No. 4987
Issued Against

Peat R Books, Inc.

PO Box 81

Brooklyn NY 11223

and agents or assigns, pursuant to authority of Title 39, U.S. Code, §4009.

P. O. Docket No. E-15 P-177

Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned Prohibitory Order.

W. H. Morgan

Acting Postmaster

Portland, Oregon 97208

City State ZIP Code

[POSTMARK] PORTLAND, OR JAN 21 1970 USPO

Dated: January 21, 1970

POD Form 2154
May 1968

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

1775 4987

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. 84189

CERTIFIED NO.

INSURED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

1 PENT-R BOOKS INC.

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

2 K. A. Bliss

DATE DELIVERED

OCT 2[illegible] 1969

SHOW WHERE DELIVERED (*only if requested*)

c55—18—71548-10 GPO

1627a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

COMPLAINT

In the Matter of Violation of Prohibitory Order No. 4987
Issued Against

Kent H Books, Inc.

Box 81

Brooklyn NY 11225

and agents or assigns.

P. O. Docket No. 3-15 P-177

On behalf of:

E. H. Cotton

Complaining Addressee

On the 2nd day of May, 19 69, you received Prohibitory Order No. 4987, copy of which is attached hereto, issued against you and your agents or assigns under authority of Title 39, U.S. Code, §4009, upon request of the above-named addressee.

Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:

1. By further mailings to the addressees listed in the order. See Exhibit attached hereto.
2. You failed to immediately delete from mailing lists owned or controlled by you or your agents or assigns the names of the addressees listed in the order. See Exhibit attached hereto.

[redacted]

[Strike inapplicable items].

Any response to this Complaint or request for a hearing with respect thereto must be filed, in writing, in the Office of the [redacted] Regional Counsel, Post Office Department (Address)

undersigned Postmaster, within fifteen (15) days after receipt of this Complaint. Attached hereto is copy of the Department's Rules of Practice relative to answering this Complaint and requesting a hearing in the matter.

[POSTMARK]

Dated: Oct. 24, 1969

E. H. Bergan

Acting Postmaster

Portland, Oregon 97208

City State ZIP Code

POD Form 2153
May 1968

1628a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

United States Post Office
Portland, Oregon 97208 JML:mc
October 10, 1969

Mr. E. R. Oetken
1055 Austin Avenue
Idaho Falls, Idaho 83401

Dear Mr. Oetken:

The General Counsel, Washington, D. C. has requested we obtain the date (on or about) that you received the second piece of mail from the Pent R Books Inc. Your second complaint Form 2150 (copy enclosed) is dated October 8, 1969.

An official envelope is enclosed for submitting the information to this office.

Sincerely,

H. W. Morgan, Acting Postmaster

By: John M. Lyons
John M. Lyons, Director
Administrative Services

Enclosures

The second mailing was received on or about Oct. 6, 1969 (Pent R Books)
Mr. E. R. Oetken

1629a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
NOTICE FOR PROHIBITORY ORDER AGAINST SENDER OF PANDERING ADVERTISEMENT IN THE MAILS

I, MRS. E. R. OETKEN (Print), addressee [parent of minor addressee] of the enclosed mailing from PENT-R BOOKS, INC. (Print)

P.O. Box 81 BROOKLYN, N.Y. 11223, consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, §4009, I request that the above-named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailings to me [as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday].

Mrs. E. R. Oetken — Signature
10/8/69 — Date
1055 Austin Ave. — Street
Idaho Falls — City
Idaho — State
83401 — ZIP Code

NAMES OF CHILDREN	BIRTH DATE
ELIZABETH OETKEN	MAY 31, 1959
ROBERT OETKEN	NOV. 4, 1962

NOTE: This notice must be accompanied by the objectionable advertisement and the envelope, or other mailing wrapper, in which the advertisement was received.

POD Form 2150
May 1968

IF YOU DON'T BUY IT WITH OUR SPECIAL MONEY BACK GUARANTEE!

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

***FIRST EDITION SPECIAL OFFER - $9.98 (Limited Time Only)**

Please check appropriate box!

- ☐ Please ship book and place my name on your mailing list.
- ☐ I am not ordering at this time but place my name on your mailing list.
- ☐ Remove my name from your mailing list.

Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

signature .....

812 E R OETKEN
1055 AUSTIN AVE
IDAHO FALLS ID 83401

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PENT-R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 10017

Gentlemen:

Please send me in plain sealed wrapper____ copies of "The Photographic Manual Of Sexual Intercourse" at the First Edition Special price of only $9.98 per copy. I am over the age of 21 years and have signed the statement on the left to that effect. I understand that if I am not completely satisfied, I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

- ☐ Regular Edition: Handsome Kivar Binding only $9.98
- ☐ Deluxe Edition: Gold-Stamped Casebound Library Volume only $12.98

☐ I have enclosed $____ ☐ Cash ☐ Check ☐ Money Order

☐ I have enclosed a $2 Deposit. Please ship C.O.D.

SAVE MONEY! Enclose full payment and save Postage and C.O.D. fees!!

PENT-R BOOKS INC.

P. O. BOX 81
BROOKLYN, N. Y. 11223

Marten
1527 NE 3rd Place
Camas, Wa 98607

BROOKLYN N.Y.

FIRST C
U.S. POS
PA
6c
Permit #

PORTLAND OCT

FIRST CLASS MAIL

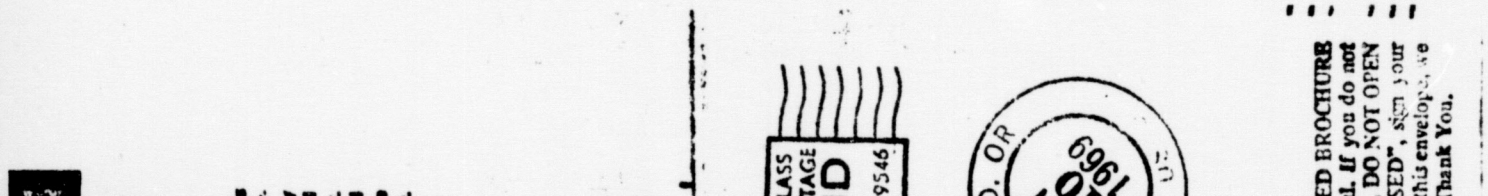
PERSONAL

~~NOTICE~~ TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRAT offering for sale ~~to~~ Adults Only, a new marriage manu wish this mail or if you are not over the age of 21 years, THIS ENVELOPE. Simply mark this envelope "REFU initials and return it to your mailman. Upon the return of will endeavor to remove your name from our mailing list.

1630a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



1631a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

SITIONS
TERCOURSE"
EX EDUCATION
OR EDUCATIONAL PUR-
N AND A LIVE WOMAN,
HER ON FILM, DEMON-
SE POSITIONS!
NT—FEMALE RAISING ONE LEG
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C RELAXED POSITION • FEMALE
SITTING UP • SITTING FACE-TO-
FACE-TO-FACE • POSTERIOR PO-
OMINANT POSTERIOR POSITION
ES AVAILABLE—ONLY $5.00 EA.

PENT-R BOOKS, INC.
Box 1555, Grand Central Station, New York, N.Y. 10017

PRICE LIST
ORDER FORM

	REGULAR 8MM—150 FT. BLACK & WHITE	SUPER 8 175 FT. BLACK & WHITE	REGULAR 8MM—150FT. FULL COLOR	SUPER 8 165 FT. FULL COLOR
PART ONE	☐ $15.00	☐ $17.00	☐ $30.00	☐ $32.00
PART TWO	☐ $15.00	☐ $17.00	☐ $30.00	☐ $32.00
COMPLETE EDITION	300 FT. ☐ $25.00	240 FT. ☐ $25.00	300 FT. ☐ $40.00	240 FT. ☐ $34.00

AVAILABLE TO MATURE ADULTS OVER THE AGE OF 21 YRS. ONLY

☐ Enclosed please find $_____ ☐ Cash ☐ Check ☐ M.O.
☐ Enclosed please find $5 Deposit. Please tally C.O.D.
☐ 8mm Film Viewer ☐ Super 8 Film Viewer

Please Ship the Items Checked Above !!

I HEREBY REPRESENT THAT I AM OVER THE AGE OF 21 YEARS AND I HAVE ELDERED TO THAT EFFECT BELOW:

SIGN _____ Signature

PRINT NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

SAVE MONEY! Enclose full payment with your order and save postage and C.O.D. charges!!

BUSINESS REPLY MAI

NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED ST

POSTAGE WILL BE PAID BY

PENT-R BOOKS INC.

P.O. Box 1555,
Grand Central Statio
New York, N.Y. 10017

"USEFUL POS
OF SEXUAL INT
A VISUAL AID TO SI
NOW FOR THE FIRST TIME, FO
POSES ONLY. SEE A LIVE MA
A MARRIED COUPLE, TOGETH
STRATING 30 USEFUL
SEXUAL INTERCOUR
PART ONE
15 USEFUL
POSITIONS
INCLUDING:
PART TWO
15 USEFUL
POSITIONS
INCLUDING:
SPECIAL 8 MM & SUPER 8 FILM VERSI

FIRST CLASS
PERMIT No. 28005
BKLYN, N.Y.

L
TATES

on,

"USEFUL POSITIONS OF SEXUAL INTERCOURSE"

A VISUAL AID TO SEX EDUCATION! Now for the first time, for educational purposes only, see a live man and a live woman, a married couple, together on film, demonstrating 30 useful sexual intercourse positions!

AVAILABLE IN TWO PARTS - 8MM AND SUPER 8
BLACK & WHITE OR FULL COLOR

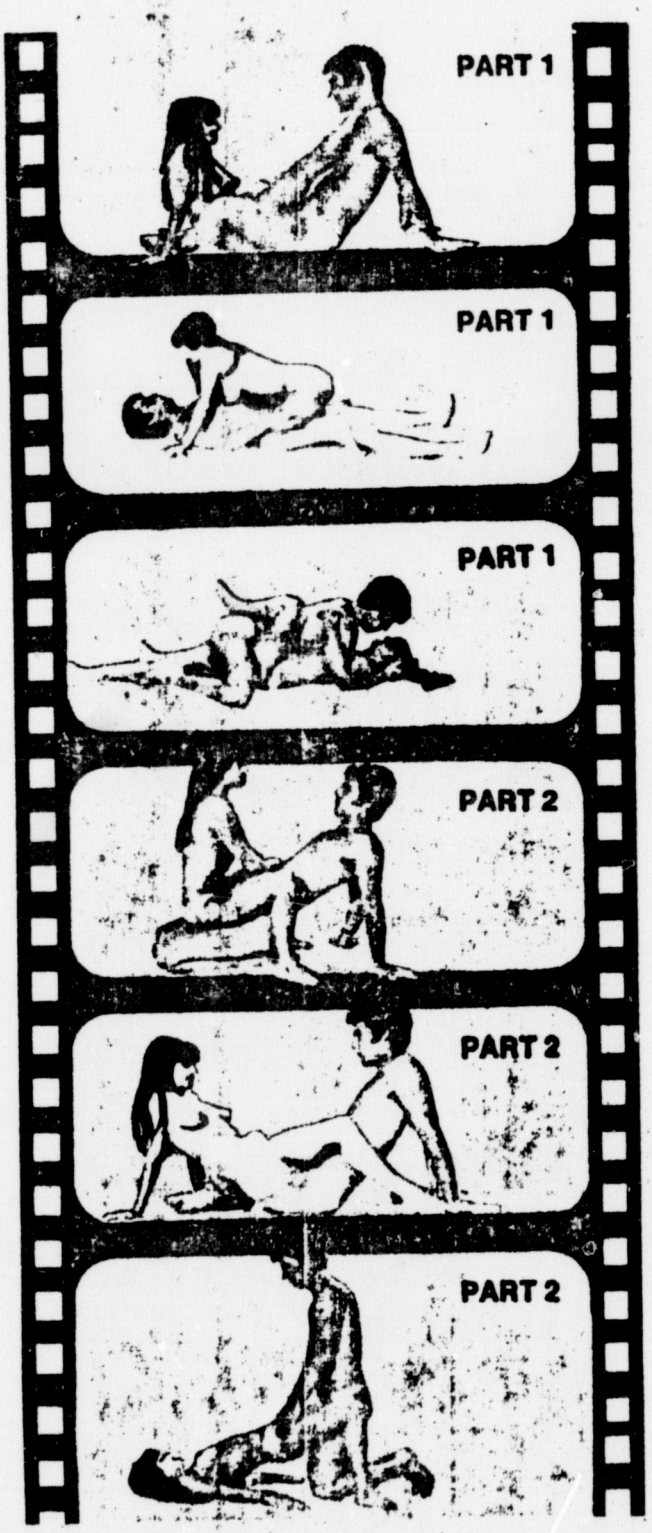
PART 1 — 15 USEFUL POSITIONS INCLUDING:

- Male Dominant — Female Raising One Leg
- Female Locking Legs Around Male For Better Penetration
- Basic Male Recumbent Position
- Female Sitting Upright Straddling Male
- Female Seated Position On Male
- Female "Seated On Peg" Position
- Sitting On Edge Of Bed Position

PART 2 — 15 USEFUL POSITIONS INCLUDING:

- Straddle Position For Greatest Clitoral Contact
- Exotic Relaxed Position
- Female Dominant — Male Sitting Up
- Sitting Face-To-Face
- Saddle Face-To-Face
- Posterior Position
- Male Dominant Posterior Position

Copyright — 1969 Pent-R Books Inc.
P.O. Box 1555, Grand Central Station, New York, N.Y. 10017



CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

USEFUL POSITIONS OF SEXUAL INTERCOURSE

PRICE LIST

	REGULAR 8MM—150 FT. BLACK & WHITE	SUPER 8 175 FT. BLACK & WHITE	REGULAR 8MM—150 FT. FULL COLOR	SUPER 8 165 FT. FULL COLOR
PART ONE	☐ $15.00	☐ $17.00	☐ $30.00	☐ $32.00
PART TWO	☐ $15.00	☐ $17.00	☐ $30.00	☐ $32.00
COMPLETE EDITION	300 FT. ☐ $25.00	340 FT. ☐ $29.00	300 FT. ☐ $50.00	340 FT. ☐ $54.00

AVAILABLE TO MATURE ADULTS OVER THE AGE OF 21 YEARS ONLY!
NO FILM WILL BE SHIPPED TO UNMARRIED MINORS!

NOTICE!

This film was produced to teach married couples how to derive the utmost pleasure, excitement, sensation, ecstasy, satisfaction and happiness from sexual intercourse. It was definitely NOT produced for persons seeking cheap thrills or those seeking to "ogle" at films of persons engaged in sexual intercourse.

SPECIAL 8MM AND SUPER 8 VIEWERS AVAILABLE . . . . . *ONLY $5.00 EA.*

ORDER FORM

PENT-R BOOKS INC.
Box 1555, Grand Central Station, New York, N.Y. 10017

Gentlemen:

☐ Enclosed please find $_____

☐ Cash ☐ Check ☐ Money Order

☐ Enclosed please find $5 Deposit. Please ship C.O.D.

Please ship the following films.

"UNIQUE POSITIONS OF SEXUAL INTERCOURSE"

☐ 8mm Black & White-Part 1 ☐ Part 2 ☐ Complete Edition
☐ Super 8 Black & White-Part 1 ☐ Part 2 ☐ Complete Edition
☐ 8mm Full Color -Part 1 ☐ Part 2 ☐ Complete Edition
☐ Super 8 Full Color—Part 1 ☐ Part 2 ☐ Complete Edition
☐ 8mm Film Viewer ☐ Super 8 Film Viewer

I hereby represent that I am over the age of 21 years and I have signed to that effect below.

_____
signature

PRINT NAME_____

ADDRESS_____

CITY_____

Save Money! Enclose full payment and save postage and C.O.D. charges!

NOW AVAILABLE ON 8MM FULL COLOR OR BLACK & WHITE FILM

USEFUL POSITIONS OF SEXUAL INTERCOURSE

a visual aid to

SEX EDUCATION

featuring

A MARRIED COUPLE

together engaged in

SEXUAL INTERCOURSE POSITIONS

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

A MAJOR BREAKTHROUGH IN SEX EDUCATION!

The Photographic Manual Of

Sexual Intercourse

BY L. R. O'CONNER — INTRODUCTION BY ALBERT ELLIS, PH.D.

NOW FOR THE FIRST TIME, THE MYSTERY OF SEX IS UNLOCKED THROUGH THE AID OF OVER 256 PAGES — OVER 150 ACTUAL PHOTOGRAPHS (*Including 40 Full Page Photos & 16 Full Page Full Color Photographs*) OF A LIVE MAN AND A LIVE WOMAN TOGETHER ENGAGED IN SEXUAL INTERCOURSE POSITIONS! *THIS IS TRULY AMERICA'S FIRST COMPLETE "SEX COURSE" IN ONE VOLUME!*

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL?

Dear Sir,

No one is born with knowledge of how to engage in Sexual Intercourse! How then is one to learn?

The schools, up until at least very recently, have completely and purposely ignored sex education. Ask a school principal or school board official and he will say, "We leave that instruction to parents." Ask a parent if he or she is teaching sex education to their children and you may hear ... "Don't worry, she has time" ... or ... "He'll learn" or "Ask his father, that's his job!" And if the parents fail, where is sexual instruction and knowledge to be obtained? Would you say the school yard or hall, the stoop, the candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear a story of someones' sexual experience. Sneak a look at a few pornographic pictures. Listen to a few lines dropped in a motion picture. Listen to T.V. comedians' subtle jokes. And above all shall we allow our youth to hear every old-wives-tale, every untruth, every misconception, every fallacy. And then, shall we pat ourselves on the back ... for we have protected morality? We have protected our society from information on sexual intercourse? Naturally, on the day our son or daughter is married, by some miraculous happening, they will leave the wedding ceremony with a complete, accurate broad knowledge of sex. No one stands to take credit for this knowledge. No one seems to know how our newly married couple has obtained sexual knowledge. (In fact, no one knows *if* our newly married couple has obtained sexual knowledge.) Let us all hope that our mythical couple has a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something private, something personal, something one person does not quickly reveal to another. In far too many cases, a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is fantastic! Premarital pregnancy is at its highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our music theatres are showing lesbian and homosexual features to packed houses. *DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL*, we ask again? We think yes, most definitely yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE REALLY NECESSARY?

We say yes ... because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indispensable aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader, so that the reader may evaluate them and come to his or her own conclusions. We feel that to publish our book *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOUSE"* without photographs would be a disservice to our readers and would confuse rather then enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It was not written for beginners or minors, though much of the information it contains would be found useful by an adult who has the responsibility of teaching the young or inexperienced. This book was designed to teach men and women, even with years of sexual experience, what they may have been doing wrong and what they could and should do to give their mate new sexual pleasures, complete sexual satisfaction and to inspire their mate to new love, devotion and happiness.

The following brochure will give you additional details on the contents of the book. We have also enclosed an order form for your convenience.

We suggest that you order a copy of *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"*, read it, show it to your doctor and if you decide that it does not deserve a permanent place on your bookshelf, simply return it for an immediate refund of your money. It's as simple as that. Our experience has shown us that if we offer a product of value and merit, we won't get many returns. You have absolutely nothing to lose and a great deal of knowledge and happiness to gain.

With my sincere personal good wishes,

Ronald Alvin

Copyright – 1969 Pent-R Books Inc. — P.O. BOX 1555, GRAND CENTRAL STATION, NEW YORK, N.Y. 10017

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

READ WHAT OTHERS ARE SAYING ABOUT THIS BOOK

"This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.E.

"This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.K., Los Angeles, Calif.

"I only wish I had seen this book early in my married life. My marriage finally failed for just those reasons which are covered in chapter Seven of this book. If only I had known what this book now makes so clear." Divorcee who was asked to comment.

"We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thanks very much." L.B. & C.K. Chicago, Ill.

TABLE OF CONTENTS

With the final chapter just complete a few short weeks ago, *THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE* is the latest, most up-to-date sex manual on the market. It is the sex of today which is presented to you; this is no compilation of ancient wisdom. People change, even the techniques of sex change. This is today's guide to sexual intercourse written for today's people! We ask you to review the table of contents:

Preface
Chapter I ..... History of Sex
Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of Sex
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral-Anal Sexuality
Chapter IX ..... Male Oral-Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
Chapter XII ..... Sexual Intercourse During Menstruation and Pregnancy
Chapter XIII ..... Satisfying Substitutes
Chapter XIV ..... Sexual Intercourse for the Old, Ill and Handicapped
Chapter XV ..... Compiling Your Own Handbook

We venture to suggest that very few other books offer the complete coverage of this single volume. The above table of contents but suggests the scope of what is offered. Each chapter is a model of clarity, of down-to-earth language which takes you instantly to the heart of the matter. This book was not written for the professional, although we fully expect that many professionals will insist upon having a copy of this book in a prominent position on their bookshelves.

Those who are considering marriage will want a copy of this book. Those who are married and are just beginning to find a certain tedium in their connubial bed will want to seek here for vital answers to their problem. Those who are ill, old or handicapped will realize that their sex life need not be the gnawing, frustrating problem it now seems to be.

Perhaps you have feelings which you think are unnatural, even abnormal. Yet your sex nature cries out for fulfillment. Which way shall you turn? What can you do? You can read this book and find the answer.

OUR GUARANTEE

TRY IT . . . DON'T BUY IT . . . With our money back offer! We have put a great deal of time, money and effort into this book. We have strong feelings about this book. We feel this book has long been needed to end sources of sexual confusion and maladjustment. We feel this book will be of immense value to thousands of men and women. To convince you of our sincerity and of the faith we have in this marvelous book we make this simple, straightforward guarantee to you: Order a copy of *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE."* Read it. Have your wife read it. If after reading this book, you do not feel powerful in your knowledge of sex, if you and your partner are not enjoying new heights of sexual excitement and pleasure, simply return the book. Every penny of your purchase price will be immediately refunded. What could be fairer than that? You have nothing to lose, but the few moments it takes to fill out and mail the enclosed order form. If sex is an important part of your life, you owe it to yourself and to your sex partner to take advantage of this pioneering book of sexual knowledge. Please act today! A postage paid reply envelope is enclosed for your convenience. And please remember, you are trying, not buying, because if you are dissatisfied for any reason, your money is returned without question or delay! Please order today! Both you and your wife will be glad that you did!

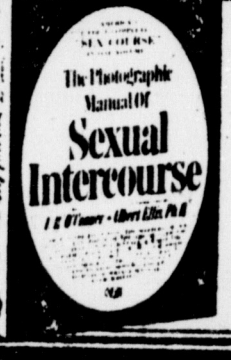
FIRST EDITION SPECIAL OFFER!
Limited Time Only! ONLY $9.98

The regular price of *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"* is $12.98. This is the price many book stores throughout the country and many mail order firms are selling this book for. To the people who were unable to take advantage of our special pre-publication $9.98 offer, we are making this "First Edition Special Offer" for a limited time only. You may purchase "The Photographic Manual Of Sexual Intercourse" with Handsome Kivar Binding for only $9.98 and save $3 for a limited time only. This special offer may not be repeated again! You may have one chance and one chance only to take advantage of this tremendous offer. Please order today! We have books in stock for immediate shipment. Our money back guarantee of course still applies!

- 256 Pages Printed On The Finest Heavy-Weight Pure White Bond And High Gloss Enameled Paper!
- Handsome Kivar Binding (Special Deluxe Binding Also Available)
- Over 150 Actual Photographs In Black & White And Full Color!
- 10 Full Page Photos & 16 Full Page Full Color Photos!

YOU MUST BE OVER THE AGE OF 21 YEARS TO ORDER!
No Books Will Be Shipped To Unmarried Minors!

USE ENCLOSED ORDER FORM AND POSTAGE PAID ENVELOPE
(C.O.D. Orders Accepted But Must Be Accompanied by A $5 Deposit.) *PLEASE CUT ALONG DOTTED LINE*



PENT-R BOOKS, INC., P.O. BOX 1555, Grand Central Station, N.Y., N.Y. 10017

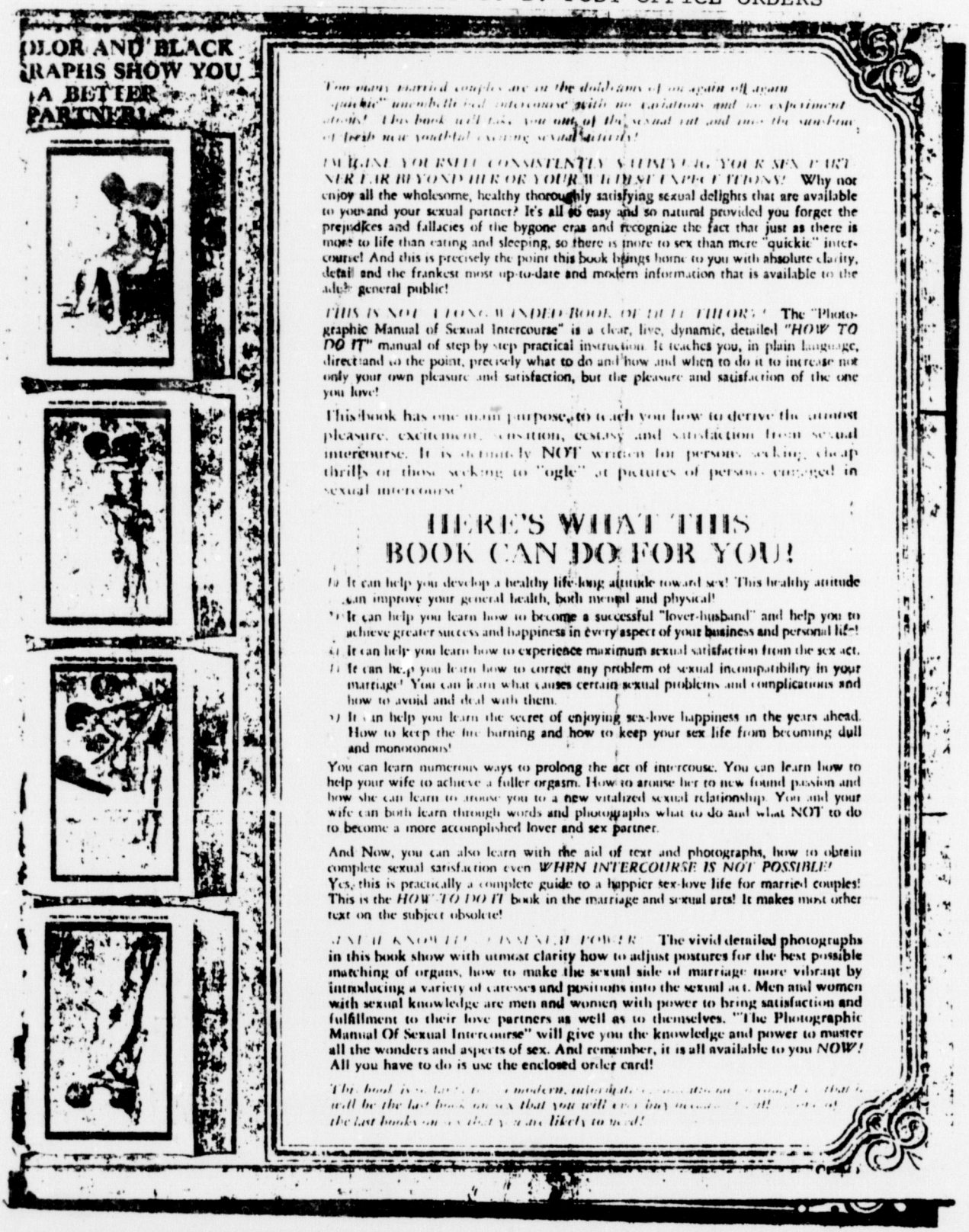
Gentlemen:
Please rush me in plain sealed wrapper _____ copies of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE".

☐ Regular Edition: Handsome Kivar Binding $9.98
☐ Deluxe Edition: Gold-Stamped Casebound Library Volume $12.98
☐ I have enclosed $_____ ☐ Cash ☐ Check ☐ Money Order
☐ I have enclosed $2. Deposit. Please ship C.O.D.

I understand that if I am not completely satisfied, I may return the book within 10 days after I receive it for an immediate refund of the purchase price.
I hereby represent that I am over the age of 21 years and I have signed on that effect below:

SIGN _____ Signature
PRINT NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
SAVE MONEY! Enclose full payment with your order and save postage and C.O.D. charges.

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



DLOR AND BLACK
RAPHS SHOW YOU
A BETTER
PARTNER!

Too many married couples are in the doldrums of on again off again "quickie" unembellished intercourse with no variations and no experiment at all! This book will take you out of the sexual rut and into the wonderful of fresh new youthful exciting sexual activity!

ENLIGHTEN YOURSELF CONSISTENTLY YOU MAY BE YOUR SEX PARTNER FAR BEYOND HER OR YOUR WILDEST EXPECTATIONS! Why not enjoy all the wholesome, healthy thoroughly satisfying sexual delights that are available to you and your sexual partner? It's all so easy and so natural provided you forget the prejudices and fallacies of the bygone eras and recognize the fact that just as there is more to life than eating and sleeping, so there is more to sex than mere "quickie" intercourse! And this is precisely the point this book brings home to you with absolute clarity, detail and the frankest most up-to-date and modern information that is available to the adult general public!

THIS IS NOT A LONG WINDED BOOK OF DULL THEORY! The "Photographic Manual of Sexual Intercourse" is a clear, live, dynamic, detailed *"HOW TO DO IT"* manual of step by step practical instruction. It teaches you, in plain language, direct and to the point, precisely what to do and how and when to do it to increase not only your own pleasure and satisfaction, but the pleasure and satisfaction of the one you love!

This book has one main purpose, to teach you how to derive the utmost pleasure, excitement, erection, ecstasy and satisfaction from sexual intercourse. It is definitely NOT written for persons seeking cheap thrills or those seeking to "ogle" at pictures of persons engaged in sexual intercourse!

HERE'S WHAT THIS BOOK CAN DO FOR YOU!

1) It can help you develop a healthy life-long attitude toward sex! This healthy attitude can improve your general health, both mental and physical!

2) It can help you learn how to become a successful "lover-husband" and help you to achieve greater success and happiness in every aspect of your business and personal life!

3) It can help you learn how to experience maximum sexual satisfaction from the sex act.

4) It can help you learn how to correct any problem of sexual incompatibility in your marriage! You can learn what causes certain sexual problems and complications and how to avoid and deal with them.

5) It can help you learn the secret of enjoying sex-love happiness in the years ahead. How to keep the fire burning and how to keep your sex life from becoming dull and monotonous!

You can learn numerous ways to prolong the act of intercourse. You can learn how to help your wife to achieve a fuller orgasm. How to arouse her to new found passion and how she can learn to arouse you to a new vitalized sexual relationship. You and your wife can both learn through words and photographs what to do and what NOT to do to become a more accomplished lover and sex partner.

And Now, you can also learn with the aid of text and photographs, how to obtain complete sexual satisfaction even *WHEN INTERCOURSE IS NOT POSSIBLE!* Yes, this is practically a complete guide to a happier sex-love life for married couples! This is the *HOW TO DO IT* book in the marriage and sexual arts! It makes most other text on the subject obsolete!

SEXUAL KNOWLEDGE IS SEXUAL POWER! The vivid detailed photographs in this book show with utmost clarity how to adjust postures for the best possible matching of organs, how to make the sexual side of marriage more vibrant by introducing a variety of caresses and positions into the sexual act. Men and women with sexual knowledge are men and women with power to bring satisfaction and fulfillment to their love partners as well as to themselves. "The Photographic Manual Of Sexual Intercourse" will give you the knowledge and power to master all the wonders and aspects of sex. And remember, it is all available to you *NOW!* All you have to do is use the enclosed order card!

This book is not just another modern, informative sex manual, though it will be the last book on sex that you will ever buy because it will be one of the last books on sex that you are likely to need!

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

A BREAKTHROUGH IN SEX EDUCATION!

No dolls, no drawings, no illustrations, no pencil sketches, no partially obscured over printed photographs, no tracings where one sheet must be placed upon another, no men and women wearing skin tights, no tricks where men and women appear in the photographs separately! Now, for education purposes only, over 100 coital positions are clearly photographed for instruction purposes in over 150 large clear photographs of a real living nude man and a real living nude woman, a married couple, together engaged in sexual intercourse positions with accompanying descriptive text in the most sophisticated, modern and up to date sex manual ever published!

AVAILABLE FOR THE FIRST TIME TO THE BOOK GENERAL PUBLIC! This brand new just published giant compendium of sex you will find one of the most informative, educational, instructive, eye-opening and mind clearing sexual manuals that you have ever seen or read. It offers the frankest, clearest, most detailed and explicit information through words and actual photographs on *"HOW TO ENGAGE IN SEXUAL INTERCOURSE"* that has probably ever been written! Over 100 coital positions are frankly described in plain language and photographed in over *150 FULL COLOR AND BLACK & WHITE DETAILED PHOTOS!*

THERE HAS NEVER BEEN A BOOK LIKE THIS BEFORE!

Many will call *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"* America's First Sex Course," Because for you and your wife, that is exactly what it can be. A step by step specific course in words and clear concise photographs of how to engage in the many forms of physical love and sexual intercourse! It can turn dull confused routine "quickie" sex into exciting sexual episodes which continue to improve each time and provide far greater degrees of pleasure and satisfaction then you or your wife ever thought possible!

Here at last, are the techniques which can transform the staleness apathy and boredom of the marital act into a series of invigorating refreshing fulfilling experiences ... each more thrilling than the last!

The Photographic Manual Of Sexual Intercourse will teach you step by step, in minute detail, each touch, each movement, each kiss, each sensitive area of the body, each technique available to you for giving your mate and yourself new heights of sexual enjoyment and contentment. More, in fact, than you ever thought possible!

NOW! Learn from down to earth solid straight no punches pulled plain language facts and over 150 clear educational Full Color and Black and White photographs the unusually helpful facts you should know about the many varied aspects of sexual intercourse!

Now for the first time in any book you can see with your own eyes, in large full color and black and white actual photographs the best positions to use for a wide variety of special purposes and sensual effects!

- **Discover the positions that narrows the vaginal opening, giving the man more stimulation!**
- **Learn the position that automatically forces the woman's thighs to add to penile stimulation!**
- **Discover the positions which most directly excite the clitoris!**
- **Find out what position holds the male organ after climax, preventing rapid contraction of the organ!**
- **Learn the position that allows the penis to penetrate to the neck of the uterus while at the same time providing even more sensation from the caressing touch of the scrotum moving upon the woman!**
- **Learn the position that holds a partial erection most firmly!**

This is only a partial list of what the photographs and text will teach you in this amazing new book!

OVER 150 FULL C
& WHITE PHOTO
HOW TO E
MARITAL

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INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

466337

CERTIFIED NO.

INSURED NO.

DATE DELIVERED

5/1/69

1. SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

Bert L. Burks Jr.

2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

H. Robinson

3. SHOW WHERE DELIVERED (*only if requested*)

e58—16—71548-10 GPO

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
PROHIBITORY ORDER

In the Matter of

Pent-R Books
Mailer

P.O. Box 61

Brooklyn, N. Y. 11223
and agents or assigns

PROHIBITORY ORDER

NO. 4987

WHEREAS, we were furnished a mailing piece containing advertising matter which you mailed or caused to be mailed to

E. R. Cothen
(Name of Addressee)

1055 Austin Avenue
Idaho Falls, Idaho 83401 08 617
(Address)

and

WHEREAS, said addressee has determined your advertisement to be a pandering advertisement offering for sale erotically arousing or sexually provocative matter, and

WHEREAS, said addressee has requested the issuance of an order pursuant to the provisions of Title 39, U.S. Code, §4009, a copy of which law is printed on the reverse side hereof, directing you and your agents or assigns, to refrain from making any further mailings to him [and his minor children residing with him who have not attained their nineteenth birthday].

NOW, THEREFORE, pursuant to the cited statute, you, your agents and assigns, are hereby ordered:

(1) To refrain from any further mailings to the following parties at the indicated address, or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder, resident, boxholder, postal patron, rural route boxholder, and local, effective on the 30th calendar day after receipt of this order:

E. R. Cothen

ADDRESS: 1055 Austin Avenue
(Street)

Idaho Falls, *(City)* Idaho *(State)* 83401 *(ZIP Code)*

(2) To immediately delete the above-named parties from all mailing lists owned or controlled by you or your agents or assigns.

(3) To immediately abstain from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the parties mentioned above.

[POSTMARK] APR

Dated:

H. W. Morgan, Acting
Postmaster

Portland, Oregon 97208
City State ZIP Code

POD Form 2152
May 1968

"§4009. Prohibition of pandering advertisements in the mails

"(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postmaster General to refrain from further mailings of such materials to designated addressees thereof.

"(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postmaster General shall issue an order if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

"(c) The order of the Postmaster General shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after receipt of the order. The order of the Postmaster General shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

"(d) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, he shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for his belief and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

"(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punished by the court as contempt thereof.

"(f) Receipt of mail matter thirty days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

"(g) Upon request of any addressee, the order of the Postmaster General shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

"(h) The provisions of subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, United States Code, shall not apply to any provisions of this section.

"(i) For the purposes of this section—

"(1) mail matter, directed to a specific address covered in the order of the Postmaster General, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postmaster General's order; and

"(2) the term 'children' includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.".

(b) The table of contents of chapter 51 of title 39, United States Code, is amended by adding at the end thereof—

"4009. Prohibition of pandering advertisements in the mails."

SEC. 302. The provisions of this title shall become effective on the one hundred and twentieth day after the date of enactment of this Act.

Effective Date: 4-15-68.

1641a

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POST OFFICE DEPARTMENT
NOTICE FOR PROHIBITORY ORDER AGAINST SENDER OF PANDERING ADVERTISEMENT IN THE MAILS

I, E. R. OETKEN (Print), addressee [parent of minor addressee] of the enclosed mailing from PENT-R BOOKS INC. (Print)

P.O. BOX 81, BROOKLYN, N.Y. 11223, consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, §4009, I request that the above-named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailings to me [as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday].

E.R. Oetken (Signature) 4-7-69 (Date)

1053 Chestnut Ave, (Street)

Idaho Falls, Idaho 83401 (City / State / ZIP Code)

NAMES OF CHILDREN	BIRTH DATE
ELIZABETH	6-31-59
ROBERT	11-4-62

NOTE: This notice must be accompanied by the objectionable advertisement and the envelope, or other mailing wrapper, in which the advertisement was received.

POD Form 2150
May 1968

TRY IT! DON'T BUY IT! WITH OUR SPECIAL MONEY BACK GUARANTEE

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

*SPECIAL PRE-PUBLICATION PRICE – ONLY $9.98 (Limited Time Only)

Please check appropriate box!

- ☐ Please ship book and place my name on your mailing list.
- ☐ I am not ordering at this time but place my name on your mailing list.
- ☐ Remove my name from your mailing list.

Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

signature .....

E R OETKEN
68 1055 AUSTIN AVE
IDAHO FALLS ID 83401

617

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PENT-R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 10017

Gentlemen:

Enclosed please find $ .....

[ ] Cash [ ] Check [ ] Money Order

Please rush me in plain sealed wrapper ____ c
of "The Photographic Manual Of S
Intercourse" at the special pre-publication pr
only $9.98 per copy. I am over the age of 21
and I have signed the statement on the left to
effect. I understand that I may return the
within 10 days after I receive it for an imme
refund of the purchase price.

PENT-R BOOKS INC.

P. O. BOX 81
BROOKLYN, N. Y. 11223

BROOKLYN N. Y.

REFUSED

FIRST CLASS MAIL

PERSONAL

NOTICE TO ADDRESS

This envelope contains an UNSOLICITED ILL
offering for sale to Adults Only, a new marri
wish this mail or if you are not over the age of
THIS ENVELOPE! Simply mark this envelop
initials and return it to your mailman. Upon the
will endeavor to remove your name from our ma

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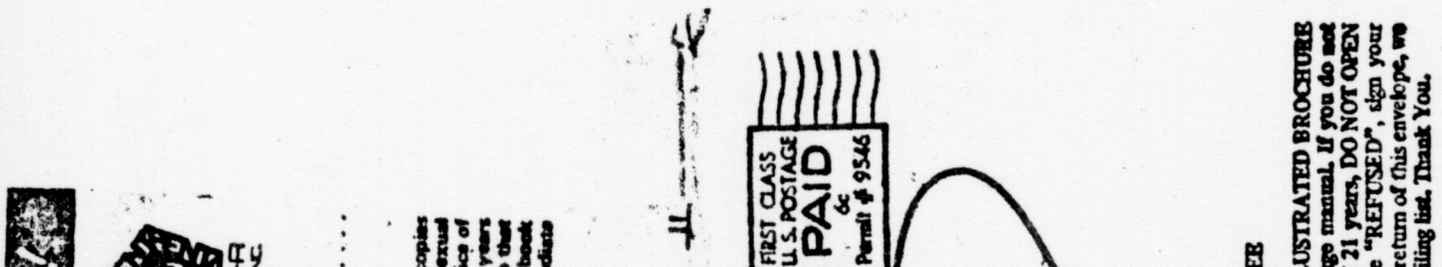

FIRST CLASS
PERMIT No. 28005
BKLYN, N.Y.

BUSINESS REPLY MAIL

NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES

POSTAGE WILL BE PAID BY

PENT-R BOOKS INC.

P.O. Box 1555,
Grand Central Station,
New York, N.Y. 10017

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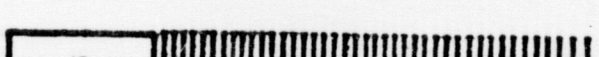

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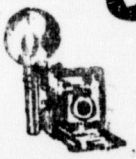
NOW AVAILABLE FOR THE FIRST TIME ANYWHERE!

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"



AMERICA'S FIRST COMPLETE "SEX COURSE" IN ONE VOLUME!

NOW FOR THE FIRST TIME, THE MYSTERY OF SEX IS UNLOCKED THROUGH THE AID OF OVER 150 ACTUAL PHOTOGRAPHS OF A LIVE MAN AND A LIVE WOMAN TOGETHER ENGAGED IN SEXUAL INTERCOURSE POSITIONS!

PENT-R BOOKS INC

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL?

PENT-R BOOKS INC. P.O. BOX 1555, GRAND CENTRAL STATION, NEW YORK, N.Y. 10017

Dear Sir,

No one is born with knowledge of how to engage in Sexual Intercourse! How then is one to learn?

The schools, up until at least very recently, have completely and purposely ignored sex education. Ask a school principal or school board official and he will say, "We leave that instruction to parents." Ask a parent if he or she is teaching sex education to their children and you may hear . . . "Don't worry, she has time" . . . or . . . "He'll learn" or "Ask his father, that's his job!" And if the parents fail, where is sexual instruction and knowledge to be obtained? Would you say the school yard or hall, the stoop, the candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear a story of someones' sexual experience. Sneak a look at a few pornographic pictures. Listen to a few lines dropped in a motion picture. Listen to T.V. comedians' subtle jokes. And above all shall we allow our youth to hear every old-wives-tale, every untruth, every misconception, every fallacy. And then, shall we pat ourselves on the back . . . for we have protected morality? We have protected our society from information on sexual intercourse? Naturally, on the day our son or daughter is married, by some miraculous happening, they will leave the wedding ceremony with a complete, accurate broad knowledge of sex. No one stands to take credit for this knowledge. No one seems to know how our newly married couple has obtained sexual knowledge. (In fact, no one knows IF our newly married couple has obtained sexual knowledge.) Let us all hope that our mythical couple has a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something private, something personal, something one person does not quickly reveal to another. In far too many cases, a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is fantastic! Premarital pregnancy is at it's highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our movie theatres are showing lesbian and homosexual features to packed houses. DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL, we ask again? We think yes, most definitely yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE REALLY NECESSARY?

We say yes . . . because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indespensible aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader, so that the reader may evaluate them and come to his or her own conclusions. We feel that to publish our book "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" without photographs would be a dis-service to our readers and would confuse rather then enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It was not written for beginners or minors, though much of the information it contains would be found useful by an adult who has the responsibility of teaching the young or inexperienced. This book was designed to teach men and women, even with years of sexual experience, what they may have been doing wrong and what they could and should do to give their mate new sexual pleasures, complete sexual satisfaction and to inspire their mate to new love, devotion and happiness.

The following brochure will give you additional details on the contents of the book. We have also enclosed an order form for your convenience.

We suggest that you order a copy of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE", read it, show it to your doctor and if you decide that it does not deserve a permanent place on your bookshelf, simply return it for an immediate refund of your money. It's as simple as that. Our experience has shown us that if we offer a product of value and merit, we won't get many returns. You have absolutely nothing to lose and a great deal of knowledge and happiness to gain.

With my sincere personal good wishes,

Ronald Alvin

Ronald Alvin

P.S.

This book cannot now be obtained in any book store or from any other mail order firm. It is presently only available from the publisher, Pent-R Books Inc.

Copyright - 1969 Pent-R Books Inc.

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READ WHAT OTHERS ARE SAYING ABOUT THIS BOOK

"This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.E.

"This is the first marriage manual I've seen that didn't beat around the bush." Mrs. W.R. New York City.

"This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.K., Los Angeles, Calif.

"I wish this book had been published 12 years ago when we were first married." Mr. & Mrs. A.S., New York City.

"I only wish I had seen this book early in my married life. My marriage finally failed for just those reasons which are covered in chapter Seven of this book. If only I had known what this book now makes so clear." Divorcee who was asked to comment.

"We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thanks very much." L.B. & C.K. Chicago, Ill.

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE!

TABLE OF CONTENTS

With the final chapter just complete a few short weeks ago, THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE is the latest, most up-to-date sex manual on the market. It is the sex of today which is presented to you; this is no compilation of ancient wisdom. People change, even the techniques of sex change. This is today's guide to sexual intercourse written for today's people! We ask you to review the table of contents:

Preface
Chapter I ..... History of Sex
Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of Sex
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral-Anal Sexuality
Chapter IX ..... Male Oral-Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
Chapter XII ..... Sexual Intercourse During Menstration and Pregnancy
Chapter XIII ..... Satisfying Substitutes
Chapter XIV ..... Sexual Intercourse for the Old, Ill and Handicapped
Chapter XV ..... Compiling Your Own Handbook

We venture to suggest that no three books taken as one, offer the complete coverage of this single volume. The above table of contents but suggests the scope of what is offered. Each chapter is a model of clarity, of down-to-earth language which takes you instantly to the heart of the matter. This book was not written for the professional, although we fully expect that many professionals will insist upon having a copy of this book in a prominent position on their bookshelves.

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YOU MUST BE OVER THE AGE OF 21 YEARS TO ORDER. No books will be shipped to unmarried minors.

USE ENCLOSED ORDER FORM AND POSTAGE PAID ENVELOPE.

PENT-R BOOKS, INC. P.O. Box 1555
Grand Central Station New York, N.Y. 10017

Gentlemen:

Enclosed please find $ .....
[ ] Cash [ ] Check [ ] Money Order

Please rush me in plain sealed wrapper _____ copies of "The Photographic Manual Of Sexual Intercourse" at the special pre-publication price of $9.98.

I understand that I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

I hereby represent that I am over the age of 21 years and I have signed to that effect below:

..... signature

Print Name. ..... Age. .....

Address. .....

City. ..... State. ..... Zip. .....

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

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NOW! Learn from down to earth solid straight no-punches pulled plain language facts and over 150 clear educational Full Color and Black and White photographs all that you will ever need to know about the many varied aspects of sexual intercourse!

OVER 150 FULL COLOR AND BL SHOW YOU HOW TO BE A B

Now for the first time in any book you can see with your own eyes, in large full color and black and white actual photographs the best positions to use for a wide variety of special purposes and sensual effects!

- Discover the positions that narrows the vaginal opening, giving the man more stimulation!
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TTER MARITAL PARTNER!

Too many married couples are in the doldrums of on-again off-again "quickie" unembellished intercourse with no variations and no experimentations! This book will take you out of the sexual rut and into the sunshine of fresh new youthful exciting sexual activity!

IMAGINE YOURSELF CONSISTENTLY
SATISFYING YOUR SEX PARTNER FAR BEYOND
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Why not enjoy all the wholesome, healthy thoroughly satisfying sexual delights that are available to you and your sexual partner? It's all so easy and so natural provided you forget the prejudices and fallicies of the bygone eras and recognize the fact that just as there is more to life than eating and sleeping, so there is more to sex than mere "quickie" intercourse! And this is precisely the point this book brings home to you with absolute clarity, detail and the frankest most up-to-date and modern information that has ever been available to the adult general public!

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The "Photographic Manual of Sexual Intercourse" is a clear, live, dynamic, detailed **"HOW TO DO IT"** manual of step-by-step practical instruction. It teaches you, in plain language, direct and to the point, precisely what to do and how and when to do it to increase not only your own pleasure and satisfaction, but the pleasure and satisfaction of the one you love!

THIS BOOK
HAS
ONE MAIN PURPOSE

This book has one main purpose, to teach you how to derive the utmost pleasure, excitement, sensation, ecstasy and satisfaction from sexual intercourse. It is definitely NOT written for persons seeking cheap thrills or those seeking to 'ogle" at pictures of persons engaged in sexual intercourse!

WHAT THIS BOOK
WILL DO FOR YOU

1) You will develop a healthy life-long attitude toward sex! This healthy attitude will improve your general health both mental and physical!
2) You will learn how to become a successful "lover-husband" which will help you to achieve greater success and happiness in every aspect of your business and personal life!
3) You will learn how to experience maximum sexual satisfaction from the sex act.
4) You will learn how to correct any problem of sexual incompatibility in your marriage! You will learn what causes certain sexual problems and complications and how to avoid and deal with them.
5) You will learn the secret of enjoying sex-love happiness in the years ahead. How to keep the fire burning and how to keep your sex life from becoming dull and monotonous!

You will learn numerous ways to prolong the act of intercourse. You will learn how to help your wife to achieve a fuller orgasm. How to arouse her to new found passion and she will learn to arouse you to a new vitalized sexual relationship. You and your wife will both learn through words and photographs what to do and what NOT to do to become a more accomplished lover and sex partner.

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Yes, this is a complete guide to a happier sex-love life for married couples! This is the **HOW-TO-DO-IT** book in the marriage and sexual arts! It makes every other text on the subject obsolete!

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DEFENDANT'S NOTICE OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.
----------x

NOTICE OF CROSS MOTION.

Docket No.
72 C 610

The defendant upon the annexed affidavits, cross-moves the Court as follows:

1. To dismiss the action, without prejudice to restoring it to the calendar upon a further showing of a further alleged violation of the law, under the general principles of equity discretion.

2. To grant summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

3. To vacate the purported prohibitory order issued in this case.

DEFENDANT'S NOTICE OF CROSS-MOTION

4. To grant such other, further and different relief as to the Court may seem just and proper in the premises.

SIGNED:

HERBERT MONTE LEVY
Attorney for Defendant
295 Madison Avenue
New York, New York 10017
689-2220

AFFIDAVIT OF HERBERT MONTE LEVY IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant,

----------x

ANSWERING AFFIDAVIT OF HERBERT MONTE LEVY, Esq.

Docket #72 C 610

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

HERBERT MONTE LEVY, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the attorney for PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment, and in support of our cross-motion for summary judgment. I am personally and fully familiar with all the facts set forth herein.

At the outset, I note that this case is thoroughly moot, and that there is no case or controversy presently pending before this Court; any order entered by this Court

enforcing the prohibitory order (hereinafter sometimes PO) would be a useless order. As shown by the annexed affidavit of RICHARD S. SCHWARTZ, the defendant has taken every precaution humanly possible -- and more so -- using every possible available computer technology, to insure that second mailings are not made to persons in regard to whom PO's have been issued. Indeed, I myself have asked the Justice Department representatives whom I met with on this case on September 25, 1973 in Washington D.C. -- Messrs. Schiffer and Cogbil -- whether they had any suggestions as to how my client might take any better precaution to insure against violations, and they were silent on this score. Nor has the Assistant United States Attorney in charge of this case locally, Lloyd Baker, Esq., ever been able to suggest any additional precautions which my client should take.

Not only has my client taken every precaution to avoid the possibility of a second mailing, but my client's position, as stated in the annexed affidavit of Mr. Schwartz, is that it has no intention whatsoever of violating any PO, that under its existing computer technology it cannot violate the PO even if it wanted to; accordingly, there is not only no threat of violation of a PO, but no possibility

of violation of the PO (barring computer error). Certainly, a computer error could not be the basis for any finding of a contempt, nor could a human error, perhaps by feeding an erroneous entry into the computer, ever be deemed a contempt. Hence, since nothing can be accomplished by any order to be entered, and since there is neither threat nor possibility of an intentional violation of a Court order, there is no ground for equity to issue an injunction. Certainly, in its discretion, no injunction should issue. The case, too, is clearly moot, and we cannot see how there is any case or controversy within the meaning of the United States Constitution, which would give this Court jurisdiction.

Nonetheless, though we note this plea in bar because of lack of jurisdiction, because of lack of case or controversy, mootness, and no threat or intent by the defendant to act illegally, we now turn to other aspects of the matter.

Irrespective of what we have set forth above, and what we set forth below, this case -- along with all the other related cases -- must be dismissed for the failure of the Postmaster General to make the final finding and

order that he is required to make before any jurisdiction can attach in this Court. Thus, Subsection D of Section 4009 provides as follows:

> "If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a District Court of the United States for an order directing compliance with such notice."

Thus, the Postmaster General must determine that the order given -- the prohibitory order -- has been or is being violated. Yet neither the order in this case, nor in any of the companion cases, makes any such determination. In fact, no determination whatsoever was made by the Postmaster General. The order itself, a form order, merely recites as follows:

> "Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned prohibitory order."

The mere claim, or fact, that satisfactory evidence was presented that defendant acted in violation of a prohibitory order, does not constitute a determination that defendant had violated or was violating the prohibitory order.

Satisfactory evidence could be presented to show a violation, and there could be evidence presented contra as well. Thus, there was simply no determination required by statute, but merely a recital that a prima facie case had been made out.This is totally different from a determination having been made of a violation.

Moreover, even had a determination been made, the statute required such a determination to be made by the Postmaster General. The determination here, such as it was, was made by a Postmaster

We are aware of no delegation of authority to a Postmaster to make such a determination, and for such a local official to make a request to the Attorney General of the United States. Yet that is apparently what happened here. Moreover, if there were any such purported delegation pursuant to either regulation or rules, we know of no authorization for such delegation, and therefore, the entire proceeding, predicated upon this order, must fall as being without a foundation.

The so-called Pandering Law, 39 U.S.C. Section 4009, gives complete discretion to the complaining addressee to determine whether the advertisement occasioning the Prohibitory Order (hereinafter sometimes "PO") is indeed a pandering advertisement. Of course, many complaining

addressees, whose libido is aroused by non-sexual materials or who are eager to shut off the mailed flow of advertisements, have certified that an advertisement is a pandering one, when to a more reasonable person it might appear that such an advertisement was not pandering, i.e., neither erotically arousing nor sexually provocative. Thus, according to the Report of the Commission on Obscenity and Pornography (Bantam Books Edition, 1970), at p. 133:

> "Prohibitory orders have been issued against nearly 400 separate business firm names mailing sexually oriented materials; orders were also issued against dozens of business firms advertising nonsexual products."

However, according to information we have received, the Government has not sought even one Court order to enforce a postal prohibitory order against any of the dozens of business firms advertising nonsexual products. It has sought Court orders only when the first mailing was -- in the judgment of the Post Office -- pandering, i.e.,of a sexually provocative or erotically arousing type. Thus, for example, I have received information, and therefore allege, that while prohibitory orders have been obtained against mailings made by such organizations as the American Civil Liberties Union and the Practicing Law Institute --

neither of which mail any material which could conceivably be called sexually provocative or erotically arousing -- the Post Office and its successor, the Postal Service, have completely failed to go into Court to seek a Court Order enforcing a PO, even when there has been a violation of the PO. We defy the Government to show otherwise.

Thus, the Government has been selectively determining in which cases it should seek a Court order. Since nothing can happen to a mailer unless and until he violates a Court order. it is quite clear that Post Office censorship is now being used in the place and stead of the discretion of the complaining addressee. Thus, the First Amendment is violated, because as construed and applied, and in its operation and effect, the law vests the plaintiff and the Attorney General with the power to make discretionary evaluations of material, and to determine which advertisers to move against, on the basis of the type of material advertised. The underlying statute is repugnant to the First Amendment and deprives defendant of its First Amendment rights, and is further repugnant to the due process clause of the Fifth Amendment, and further deprives

defendant of liberty and property without the due process of law required by the Fifth Amendment, as well as depriving defendant of the equal protection of the laws under the said Fifth Amendment.

The administrative complaint issued by the Post Office did not state any cause of action, in that it failed to allege the date of the alleged second mailing, and in that it further failed to allege that such alleged mailing was made more than 30 days after the defendant's alleged receipt of the alleged PO.

As construed and applied, and in their force and effect, 39 U. S. C. Section 4009 and the Rules and Regulations promulgated thereto and thereunder, are repugnant to the due process of law clause of the Fifth Amendment and to the Sixth Amendment, and deprive defendant of liberty and property without said due process, and of its right under the Sixth Amendment to a trial by one who is impartial, to be informed of the nature and cause of the accusation, to confront and cross-examine the witnesses against it, and to have compulsory process for obtaining witnesses, the defendant not being given the "full hearing" afforded him according to the decision of the Supreme Court of the United States in Rowan v. United States Post Office Department, 397 U.S. 728 (1970), for the following reasons:

AFFIDAVIT OF HERBERT MONTE LEVY

In every Post Office hearing, the hearing officer--an employee of the Post Office which is bringing the complaint--has been the prosecutor, the judge, the jury, and, to the extent to which he has introduced in evidence varying papers, a witness. Wherever the Post Office has purportedly determined that defendant or someone acting in its behalf has violated a PO, such determination has been made without the testimony of any person whatsoever identifying any materials or the dates of their being received or sent, thus without any legal evidence whatsoever. Despite repeated demand made therefor by the defendant here, no complaining addressee has ever been produced at an administrative hearing, nor has any such person's testimony been permitted to be taken by deposition after due and proper requests therefor, the Post Office disregarding its own rules and regulations in regard thereto, and consistently failing to give any information whatsoever on how its own rules and regulations are being implemented. It is our understanding that the Post Office has never even inquired as to the willingness of the complaining addressee to appear and give testimony at a Post Office hearing. Thus, any mere indication by a complaining addressee, or any written (but invariably unsworn) statement by the complaining addressee,as to the date of

receipt of the second mailing, has been accepted as uncontrovertable Gospel truth by the Post Office, with no opportunity being given to the defendant to show error or hostility on the part of the complaining witness.

Insofar as the plaintiff may rely upon the presumption of 39 U. S. C. Section 4009(f), such presumption is arbitrary, capricious, unwarranted and unreasonable, especially in view of the notoriously poor mail service of the last several years.

The defendant has been denied its right to a hearing before the Post Office, and, unbelievable as it may sound, the Post Office has in effect taken a default against my client by reason of its own inefficiency, by reason of its own inability to properly transport the mail to itself. The Pandering Law requires that a demand for a hearing be filed with the Postmaster General within 15 days after the PO has been received by the mailer. The Post Office immediately began violating this provision of the law, by requiring the demand for a hearing to be addressed not to Postmaster General, but to the local Postmaster, or to someone at a local Post Office; this is clear from an examination of the text of the complaint issued by the Post Office. Thus, it was improper for the Post Office to take a default in any situation, since it required a filing with the wrong official.

AFFIDAVIT OF HERBERT MONTE LEVY

Nonetheless, at the time that the administrative complaint was issued in this case, I had followed the following procedure:

The latest stamp on the back of the envelope containing the administrative complaint, I reasoned, was the earliest date upon which the PO was delivered to client; certainly, it was a reasonable date to measure from, since obviously the Post Office could not have put a stamp on the back of the envelope after it had parted with its custody. Accordingly, when received from client, it was my practice to make a notation as to the deadline date for mailing in the demand for hearing, based on the latest Post Office stamp. Where a stamp showing date was put on by my client, I measured from this date of receipt. I calculated this date as being 14 days from the latest date stamped on the back of the envelope, except where the 15th day would fall on a Monday, and I would note my deadline as being the Friday preceeding that Monday. Appropriate adjustments were made if a holiday intervened. I would then make it my business to mail out my demand for a hearing on or prior to that deadline date.

AFFIDAVIT OF HERBERT MONTE LEVY

This was my practice for many many months. The Pandering Law's effective date was April 14, 1968. I had no problems whatsoever with my practice until sometime in 1969 when I noticed that, although I was following my prior plan of action, I was suddenly the recipient of defaults all over the place.

Upon inquiring as to why these defaults were being taken, I was orally advised by Post Officials (just who advised me, I do not now remember) that the Post Office had adopted a new construction of the statute, that they had now decided that they were going to take the words of the statute literally, and if the demand for hearing was not actually "filed" by arrival at the particular Postmaster's office on or before the 15th day, this would be considered a default. I protested that even Internal Revenue Service, when it requires that you file a certain tax return by a certain date, considers you to be on time if your mailing envelope is postmarked on the day set for filing, and that the Post Office was now claiming that it could put me in default by being slow and inefficient in the delivery of mail to itself. My protests were to no avail. Annexed hereto are copies of my correspondence in this regard, which were sent.

AFFIDAVIT OF HERBERT MONTE LEVY

I might also perhaps add that I was extremely careful to always have my demand for hearing sent out on the date that the demand for hearing bore; that demand for a hearing was sent out, though it is not reflected in the "certified" file submitted by the Government, on the day indicated on the demand for hearing, (copy annexed) and there was thus absolutely no reason whatsoever why, in equity or logic, the Post Office took a default solely because of its own inefficiency in delivering mail to itself.

Though the notice of motion recites that it is proceeding upon an annexed certified copy of the record of the proceedings in the Post Office Department, there is absolutely no copy of any certification whatsoever annexed to the papers that have been served upon defendant. Since no affidavit of any sort has been submitted with the Government's moving papers, there is thus simply no factual basis whatsoever upon which this Court can imply or find any fact whatsoever upon which to base the injunction that the Government seeks. Accordingly, this proceeding must be dismissed. However, on the bare possibility that there is a certification in existence and that an inadvertent clerical error

resulted in no copy of the certification being served with the motion papers (though this is unlikely, in view of the fact that amongst the numerous cases in which summary judgment papers were served upon defendant, there is frequently an absence of such certification), we nonetheless go on to note the following, in regard to the merits of the Government's application.

Amongst the papers submitted to the Court is what purports to be a return receipt executed by defendant, for the particular prohibitory order involved in this case. However, there is simply nothing whatsoever to tie in that particular return receipt with the particular prohibitory order. In this connection, it should be noted that this particular defendant has received approximately 200,000 Prohibitory Orders. The Post Office had issued approximately 325,000 Prohibitory Orders by December 31, 1969. Vol. III, Technical Report of the Commission on Obscenity and Pornography, p. 161. It would thus be the easiest thing in the world for the Post Office to have mixed up a particular prohibitory order with a return receipt for another prohibitory order, or with a return receipt for a complaint, or with a receipt for virtually any communication between

the Post Office and the defendant, -- or between others -- and to have annexed that to the prohibitory order as the purported receipt for the particular prohibitory order. In the complete absence of any identification whatsoever of the return receipt being a return receipt for the particular prohibitory order, there is simply no proof whatsoever as to either the receipt of the prohibitory order by the defendant or of the date of such receipt. In the absence of proof as to receipt and/or date of receipt, obviously there can be no finding of a violation of that prohibitory order which would have become effective 30 days from the date of its receipt. Since there is no showing of the fact of receipt or the date of receipt, it is thus impossible to show what was the effective date of the order, and therefore impossible to show whether or not there had been a violation by a second mailing, assuming at this moment that a second mailing had been made.

The Pandering Law, as it existed at the time of the alleged violation complained of here, did not require merely that a prohibitory order be issued as an order of the Post Office, or its present

successor the Postal Service, but required that the prohibitory order be issued by the Postmaster General. In the case at bar, the prohibitory order was not issued by the Postmaster General.

In the case at bar, the order was issued by a local Postmaster, who had no authority to issue such an order. If indeed there was any administrative regulation authorizing the delegation to a local postmaster of the power to issue a prohibitory order, then, we submit, there is simply no authority in law for such delegation to have been made, where, as here, the statute expressly requires the Postmaster General to issue the order. The prohibitory was a complete nullity, and the entire proceeding must fall as being without a foundation, the Government's motion for summary judgment should be denied, and summary judgment should be granted to the defendant.

We turn next to the problem of whether, even assuming that the record is properly certified and that the so called evidence of date of receipt of the second mailing was admissible, -- both assumptions being purely for purposes of argument, -- a violation

of the prohibitory order has been made out. We note, at the outset of this facet of the argument, that there is completely lacking any proof whatsoever of the date of the second mailing, that such date was never alleged, and that therefore the defendant was never accorded due process of law under the Fifth Amendment and the right to know the nature and cause of the accusation against it under the Sixth Amendment. Just as significant, however, is the fact that the second mailing bears no postmark whatsoever. Thus, the Government is forced to rely upon the statutory presumption found in Section 4009 (f), that a mailing received more than 30 days after the effective date of prohibitory order is presumed to have been sent in violation of the order. But, as we show in our brief, the effective date of the order is 30 days after it has been received, so that there is no presumption of a violation unless the second alleged mailing was allegedly received 60 days or more after the date of receipt of the prohibitory order.

We come next to the question of admissibility of the evidence of the alleged date of receipt of the second alleged mailing. In view of the improper certification of the record, we do not see how such proof can be

admissible in any event; it is completely unsworn to, and it is the rankest kind of hearsay. The Government, in its brief, has not attempted to sustain the admissibility of this evidence. We expect, however, that the Government will urge that, assuming proper certification, it is admissible under the Federal Business Records Act (28 U. S. C. Section 1732 (a)) as a record kept in the ordinary course of business, it being the ordinary course of business to keep such records. However, as we show in our brief, since the business involved is that of the Post Office, and the entries as to alleged dates of receipt were made by third persons, not by the Post Office, such rule does not apply. Moreover, even if such a rule did apply, in a normal case, it would not be applicable here, for this reason:

The normal reason for permitting evidence of business records to be admitted is that such records are inherently reliable. But in a prohibitory order-pandering case, we submit, such evidence is inherently unreliable. For several reasons, as follows:

a) The type of person who goes to the time and trouble of going to the Post Office to obtain a prohibitory order rather than merely tear up the material which offends

him, especially when -- as here -- he has been given notice of the contents of the envelope (see the right hand bottom of the mailing envelope), is obviously the type of person who is sorely offended by sexually oriented material, the type of person, indeed, who very well might, usually does, wish to see as much trouble caused to the mailer of such material as possible, even when, as here, the material involved has been held to be not obscene. This is graphically illustrated, despite all the hypocrisy of the Pandering Law, in the statement of one addressee, in the case purportedly pending in this Court of United States v. Pent-R Books,72 C 606, where the addressee noted as follows on the notice (request) for prohibitory order:

> "I request more than this (see below). This form evades the real issue. I have no minor children in my home, but YOU know this literature is reaching homes that have minor children. I AM NOT CONTENT WITH MERELY STOPPING THIS TYPE OF PORNOGRAPHIC MAIL FROM REACHING MY HOME; I EXPECT THE POST OFFICE AND JUSTICE DEPTS. TO FLUSH OUT THE SOURCE OF THIS OBSCENE MAIL, GET HIM OR THEM IN PRISON, AND STOP ANY OF THIS STUFF FROM BEING MAILED OUT AT ALL."

Similarly, in another purportedly pending case, in the memorandum from the Post Office Dept. dated June 3, 1969, the Postmaster recites that the complaining addressee, Mr. Griffis,

> "...is very concerned about this type of literature in the mails and offers his assistance and cooperation in trying to rid the mails of it."

And this is very obviously the attitude of the Post Office.

b) There may be community pressure, pressure by Post Office officials, or even by the local Postmaster or postman to attempt to make out a violation of a prohibitory order in order to cause more trouble for the mailer, in this emotionally-charged situation. The defendant is precluded from obtaining an examination of the complaining addressee in order to determine this, and there is simply no way in which the defendant can ever obtain such information. But this has happened. Graphic and dramatic proof of this -- of a direct Post Office attempt to influence an addressee to set forth a false date of receipt of mail so as to be able to find a violation of a prohibitory order, -- was accidentally uncovered during a hearing in another case involving this very defendant.

Thus, in the Post Office case entitled "In the Matter of: Violation of Prohibitory Order No. 633, issued against Pent-R Books, Inc., Respondent, on behalf of Thelma M. Moser, Complaining Addressee, by Postmaster, Phoenix, Arizona," Post Office Docket # R14-Pa64-633, Gary Langer, Esq., then of my office, at the Post Office hearing, asked to

look at the original folder. Upon it being examined, Mr. Langer noted that in the file, there was a card, obviously prepared by the Post Office, the bottom of which purported to show the date of receipt reading:

> "On August 27, 1969, I, Thelma Moser, received from the Pent R Book (sic) a second letter",

apparently signed by Thelma Moser. But immediately preceding this legend, also obviously prepared by the Post Office -- which had failed, however, to cut it off -- appeared the following:

> "In order to make a case against this firm we must have signed statement as to date of delivery of the second letter. The date given is an estimated date, but will give us the correct waiting period to carry on this complaint. An envelope is supplied for your convenience and no postage is necessary."

A Xerox copy of the card is being filed with this Court in United States v. Pent-R Books, Inc., 69 C 1362.

That this came from the Post Office is quite clear -- no one else would or could have given this "information" and supplied a postage-free envelope. The Post Office's clear motive was "to make a case against this firm (defendant)", and the date given was an estimated date, obviously "estimated" by the Post Office in order to give them "the correct waiting period to carry on this complaint."

Thus, the alleged date of receipt of the second mailing in that case was a totally fictitious date that the Post Office itself "estimated" in order to show a violation. (How could the Post Office make an estimation of that which was not within its own knowledge?) It will be noted that the alleged date of receipt, August 27, 1969, was completely typed in on the same typewriter which had written the instructions, and was obviously not done by Thelma Moser. Filed in 69 C 1362 will be a photocopy of the transcript of the stenographic minutes of the Post Office hearing on this matter.

In the complete absence of any opportunity to cross examine Thelma Moser, or the Postal officials involved -- an opportunity constantly requested by us, but always denied in each and every case, -- the defendant is simply at the mercy of the Post Office, when the Post Office thus unilaterally decrees the alleged date of receipt of the second mailing, to get a correct waiting period to carry on its complaint. The Post Office obviously picks a date convenient to show, in their legal judgment, a violation. How widespread this practice has been by the Post Office, it is impossible to determine. (We should also note that the Post Office has consistently taken the position that receipt of a second

mailing more than 30 days after receipt of the prohibitory order presumptively establishes a violation; though this position is incorrect, it explains why the Post Office does not always suggest a date of receipt of the second mailing more than 60 days later.)

Of course, this shows that when the Government seeks equity here, it does not come into Court with clean hands. Its hands are despicably defiled by its covert attempt to frame the defendant in the Moser case, an attempt disclosed only through its carelessness in not cutting off the top of the card in this instance. While this is not one of the cases presently pending in which summary judgment is sought, the simple fact is that there is no investigatory tool whatsoever by which we can ascertain how widespread this practice is and was. Denied the right to confront and examine a complaining addressee, which we contend is a denial of liberty and property under the due process clause of the Fifth Amendment and the denial of the right to cross examine and confront defendant's accusers under the Sixth Amendment, but with the proof of at least one attempted frame-up, we submit that the Government must either submit all of its complaining addressees and Postal Officials to confrontation and cross examination, or that equitable relief should be denied by the Court.

AFFIDAVIT OF HERBERT MONTE LEVY

In my affidavit, I note that the Post Office hearing examiner sits as the witness, judge, and jury. An examination of the transcript of the minutes in the Moser case shows the vice of such multiple roles being combined in one person. The hearing officer was David S. Kelson, Esq., an attorney for whom I have the greatest respect and admiration. Yet even Mr. Kelson, when faced with indubitable proof of the Post Office framing a defendant, rose to the defense of his employer, the Post Office. It is, under the circumstances, a severe denial of due process to permit the same person to be witness, judge and jury, especially when he is employed, as here, by the same Department which makes the accusation of violation.

Thus, whatever exception there might be based upon inherent reliability of business entry records is totally lacking in this case. In this day of revelation after revelation of improper conduct on the part of highest Government officials, and with at least one Postmaster having been found out to attempt to obtain false statements as to date of receipts of second mailings, it would simply ludicrous to hold that there was any inherent reliability in the alleged statement by an addressee of the date of receipt of the second mailing.

AFFIDAVIT OF HERBERT MONTE LEVY

The indication of the date of receipt of the second mailing envelope is signed by a person apparently related to the complaining addressee, rather than by the complaining addressee personally, shows when the relative received it, but does not show when the complaining addressee received it, and therefore is totally valueless to start the presumption into operation. The Government's motion should accordingly be denied.

While the law as quoted in the Government brief now permits a complaint to be issued by the Postal Service, it is nonetheless true that the statute as it existed at the time of the issuance of the complaint in the case at bar required that the complaint be issued by the Postmaster General. So, too, with the order determining the violation. But in the case at bar, the Postmaster General did not issue the administrative order finding the violation, or any administrative order.

On the contrary, the complaint was issued by a local Postmaster.

AFFIDAVIT OF HERBERT MONTE LEVY

There has been neither showing nor claim that there was any statutory authority -- palpably lacking -- for the delegation by the Postmaster General to such person, an authority which would seem to be singularly lacking, in view of the fact that recommendation has been made to the Attorney General to seek a Court order upon the say-so not of the Postmaster General, a Cabinet officer, but on the say-so of a minor functionary. If there be such a delegation of authority, we are unaware of it, and further unaware of any statutory or other basis for such delegation.

Finally, we note that the prohibitory order and the complaint issued out of the Post Office not at Idaho Falls, Idaho , the address to which the first mailing was made, but out of Portland, Oregon
We submit that the Postmaster at the latter city has no jurisdiction over mailings to the former city.

This affidavit has been particularly directed towards the particular facts in this case. We also submit herewith an affidavit by Richard S. Schwartz, which will be filed in every one of the presently pending Pent-R cases, which attacks the proposed relief requested by the Government on numerous other grounds, common to all of the cases pending in this Court, against this defendant.

AFFIDAVIT OF HERBERT MONTE LEVY

For the reasons stated in this affidavit, as well as for the reasons set forth in Mr. Schwartz' more generic affidavit, we submit that the Government's motion for summary judgment should be in all respects denied, and that our cross motion for summary judgment should be in all respects granted.

Sworn to before me this
6th day of November, 1973

HERBERT MONTE LEVY

GILSOM SAFDEYE
Notary Public, State of New York
No. 3425478
Qualified in Kings County
Commission Expires March 30, 19 75

EXHIBIT, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY.

H.W. Morgan
Portland, Oregon 97208

Pent-R Books, Inc. November 7, 1969
Oetken)
R-15 P-177

October 28, 1969

(From demand for letters)

Frazer

Pent-R Books, Inc.
R-15-P-163

4. The Postmaster at Portland has no jurisdiction over mailings to Idaho Falls, Idaho.

EXHIBIT, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

5. Only copies of the Prohibitory Order and of the mailing envelopes are annexed to the complaint.

6. The papers annexed to the complaint do not show which was the first and which was the second mailing envelope, but they do show that one of the mailings was marked "refused". Whichever envelope was refused, the addressee could not have the necessary determination after exercising the necessary discretion required to bring the statute into play, and thus the entire proceeding must fall, as being without a foundation.

HERBERT MONTE LEVY

AFFIDAVIT OF RICHARD S. SCHWARTZ IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.

Defendant.
----------x

ANSWERING AFFIDAVIT OF RICHARD S. SCHWARTZ.

Docket #
72 C 610

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

RICHARD S. SCHWARTZ, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the Secretary of defendant PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. as well as of RAS ENTERPRISES, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment herein, and in support of defendant's cross-motion for summary judgment. I am fully and personally familiar with all the facts set forth herein.

AFFIDAVIT OF RICHARD S. SCHWARTZ

EXTRAORDINARY PRECAUTIONS TAKEN BY DEFENDANT TO AVOID OFFENDING RECIPIENTS OF ITS MAIL.

Upon the outside of all mailing envelopes sent by defendant, or upon the outside of an inner sealed envelope, there had always appeared a notice advising the recipient of the nature and content of the advertisement contained therein.* If the recipient did not want this material, he merely marked the envelope "Refused", as invited to by defendant, initialed it, and returned it to the postman or dropped it into a mail box which he was sure to pass sometime during the day, all at defendant's expense, after which defendant removed the addressee's name from its mailing list.

Defendant had thus avoided the necessity of an addressee viewing materials which he preferred not to be exposed to, unlike the requirements of the Pandering Law where, if the complaining addressee is to be at all honest, he must open and view the materials. We had also avoided the time

* This practice ceased in 1970, when the Goldwater Amendment to the Postal Reorganization Act of 1970 required the legend "Sexually Oriented Ad" to appear on the envelope or on an inner sealed envelope. Defendant then followed that law. See Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp.297 (E.D. N.Y. 1971).

consuming necessities inherent in the addressee obtaining the Prohibitory Order and following through for a complaint. We emphasize that defendant had always done this -- starting long before the effective date of the Pandering Law.

Defendant has thus always been extremely careful of the sensibilities of persons who might otherwise be offended. Incidentally, lest the Court think that the more than 200,000 prohibitory orders that have been received by the defendant seem excessive, we note that defendant has mailed perhaps more than 10,000,000 advertising pieces, and thus the percentage of prohibitory orders received by it from all its mailings is some 2%. And though some 200,000 people purportedly objected to our ads, more than 450,000 copies of the book advertised have been sold. We further note that the advertisements, involved herein, for "The Photographic Manual of Sexual Intercourse", have been ruled non-obscene and constitutionally protected by Judge Masterson of the U. S. District Court for the Eastern District of Pennsylvania, United States v. Stewart, unreported, Crim. No. 69-162,

Order dated October 13, 1971. Under these circumstances, we note that if 39 U.S.C. §4009 or its successor be applied to the defendant, who is shown here to be engaged solely in publishing, selling and distributing materials protected by the First Amendment, with a warning notice described above, such application is unreasonable, arbitrary and capricious, repugnant to the due process of law clause of the Fifth Amendment and to the First Amendment, and deprives defendant of liberty and property without due process of law and constitutes an unreasonable, capricious and arbitrary restraint on First Amendment rights, especially in view of the severe limitations on First Amendment rights necessarily encompassed in any attempt to avoid a conflict with 39 U.S.C. §4009 -- as we shall show below. For the price of compliance with §4009, as we note below, is that many mailings cannot be made to persons who wish to receive such mailings, and therefore the statute prevents mailings to persons who desire to receive them, thus interfering with their -- and defendant's -- First Amendment rights -- a possibility never considered by the Supreme Court of the United States in Rowan, a case which

was instituted in the early days of the Pandering Law, without any opportunity whatsoever for the Supreme Court of the United States to have any but the sketchiest information on how the law worked out in practice.

SINCE THE DEFENDANT HAS NEVER WILLFULLY VIOLATED A PROHIBITORY ORDER, AND SINCE THE DEFENDANT HAS TAKEN ALL POSSIBLE PRECAUTIONS TO AVOID SECOND MAILINGS, INCLUDING DEPRIVING PERSONS WHO WISH TO RECEIVE ITS ADVERTISEMENTS OF THE RIGHT TO DO SO, AND SINCE DEFENDANT NOT ONLY DOES NOT THREATEN TO MAKE AN ADDITIONAL MAILING BUT HAS MADE IT VIRTUALLY HUMANLY IMPOSSIBLE TO DO SO, AN ORDER SHOULD NOT ISSUE ENFORCING THE PROHIBITORY ORDER.

The so-called Pandering Law went into effect on April 14, 1968. At that time, no one knew for certain what its operation and effect would be. But after more than 5 years of experience with this law, the defendant knows, and shall hereinafter demonstrate to this Court, that this law cannot be complied with except by disregard of defendant's own First Amendment rights -- which defendant has had to disregard in order not to be in conflict with the law. We thus claim that the law, so construed and applied, in its operation and effect, does violate the First Amendment.

AFFIDAVIT OF RICHARD S. SCHWARTZ

At no point whatsoever did defendant ever willfully make a second mailing in violation of a prohibitory order; at the present time, and for at least the last three years, because of the computerization that the defendant has used, we submit that not only does defendant have no intent of violating the prohibitory order here, but it could not do so even if it wished. It is our contention that in the complete absence of any willfulness in the second alleged mailing, plus the fact that there cannot be a willful mailing hereafter, an order of this Court should not issue.

As we shall show in some detail at length below, there is no doubt of defendant's good faith and diligence in attempting to comply with the Pandering Law. The cases involved here all deal with second alleged mailings in 1969, in which year Pent-R made about 10,000,000 mailings. But long prior to the 1968 effective date of the Pandering Law, we had set up a computerized system, solely in order to be able to completely comply with the terms of the law. That system was set up by the President of defendant, Ronald A. Stewart, with my assistance, through arrangements made with a computer

house and a system was devised as shall be set forth below. The cost of running that computer operation in the year 1969 was some $62,068. We are advised by the computer house, that it now estimates that it used the services of the equivalent of 25 people working full time for 6 months -- which it computes as the equivalent of one person working 3000 days, or 24,000 man hours -- in order to set up and process the system. As we note at length below, difficulties were encountered because of the use of rented lists, and rented lists were finally abandoned unless they were on computer tape, where the computer could prevent second mailings. The computer operation became more and more refined as we had more experience with it. The use of duplicate mailing labels was eliminated in 1970, when it was found that this resulted in violations of prohibitory orders. The system itself was finally programmed in 1971, and is still carefully programmed, to guard against second mailiings to such an extent that the computer eliminates even mailings that have not been prohibited. Thus, as we learned of mistakes which took place, we corrected them at once, and took vigorous

steps to prevent recurrence of these mistakes or further mistakes in the future. The new system of control greatly improved the situation. It is and has been as nearly perfect as a system can be.

Even originally, as we first set up the computer programming, we had a great rate of success with it. Thus, although we received something more than 200,000 prohibitory orders, the complaints of violation which have so far been upheld by the Post Office -- which bends over backwards to be fair to itself, -- number only approximately 500. Thus, even giving the Post Office the benefit of every doubt, even now the Government charges that only some one quarter of one percent (0.025%) of the prohibitory orders issued to Pent-R were violated. Moreover, every time we have received a complaint from the Post Office, we have once more fed the name and address of the complaining addressee into the computer, so that no further mailings would be made to such complaining addressees. We have fed these names and addresses into the computer for a <u>third</u> time upon receipt of a Complaint filed in this Court.

AFFIDAVIT OF RICHARD S. SCHWARTZ

Even if an injunction were issued in this case, it would and could have no effect by way of insuring better compliance in the future. With all the efforts we have made, it would be unjust to us to do so, in view of our good faith, and not in the public interest.

Actually, our success ratio is even better than the figure of 1/4 of 1% violations -- or 99 3/4% compliance. Thus, we note the following: All mailings for defendant were handled by another corporation, RAS Enterprises, Inc., of which Mr. Stewart is again the President and I am again the Secretary, as here. The mailings made by RAS Enterprises, Inc. are almost all of a nature that some would undoubtedly find erotically arousing or sexually provocative, so that the mailings of virtually every other corporation which had been processed by RAS have resulted in prohibitory orders. However, though we estimate that Pent-R, plus all the other corporations serviced by RAS (including RAS itself) have probably had approximately 248,500 prohibitory orders issued against them, there were only seven administrative complaints of violation issued in the first half of 1972, none in the second half of

1972, nor in the first 6 months of 1973. Since then, there have only been three administrative complaints, all issued against an affiliated division of RAS, Companion Products; no material whatsoever was furnished in regard to one of the complaints, so we are at a loss to know whether or not it was justified; in the two cases where some materials were annexed to the complaint, it is perfectly clear that the prohibitory order was not violated. Thus, though there are approximately some 248,500 prohibitory orders issued and outstanding against all such corporations, there have been only some 10 administrative complaints of violation between January 1, 1972 and date -- an alleged violation rate of less than 0.004%*. Our computer house has estimated the expected rate of computer error to be 1/2 of 1%, so that it is plain that, by falling below this rate of error, defend-

* This rate assumes that all ten administrative complaints were valid. Since we know that at least two of them were invalid, we have at most eight valid complaints,(only one of which was received after July 1, 1972); assuming the eight are all valid, the violation rate since January 1, 1972 is cut from 0.004% to 0.003%.

and (and its computer house) have done a superlative job. There is simply nothing else that we can do, of which we are aware, to avoid offending against the statute. Our good faith effort to comply with the law is perfectly clear. I now detail the course of our computer campaign.

Of course, before the Pandering Law became effective in 1968, defendant had tooled up in order to be able to comply with it. It immediately, upon receiving its first prohibitory order, began to comply with the law, in the following way.

After a prohibitory order was obtained in the Post Office, it was opened by defendant, and dated with the date of receipt (subject, of course, to error -- a lot of them in the beginning, where we failed to put on the date of receipt). A photocopy of each prohibitory order was made, which was sent to the computer house, or "Listing House", while defendant retained the original for its files. At the computer house, the names and addresses of persons to whom mailings should not be made, as they appeared in the ordering part of the prohibitory orders, were typed. These were then read by a device known

as an optical scanner, whose function it is to translate the written material into electrical impulses which are put, and then stored upon, a magnetic tape, in a symbolic form. The Pent-R mailing list was put up on a tape itself. When a name appearing on a prohibitory order also appeared on a tape for the Pent-R mailing list, the matching of the two tapes would prevent that person's name from being printed out by the computer on the mailing list which the computer prints out. At the same time, these were sorted out by zip codes.

Two problems became apparent. The first problem was with rented lists. The mailing lists, owned by, sold to and rented to defendant were and are lists of names and addresses of intellectual, mature adults who had previously received from others, similarly situated to the defendant, advertising or other materials similar to those disseminated by defendant. They were and are mailing lists of names of persons such as doctors, dentists, attorneys, accountants, druggists and other professional people, and owners or proprietors of various businesses thus assuring as much as possible that none of the

addressees were or are minors. Because of their nature, many of such mailing lists owned by defendant, and those rented or purchased from others by defendant and others, overlap, and the names of the same persons frequently appear on both such lists.

In view of the many prohibitory orders received by the defendant, it was physically impossible to visually compare, by human vision, the names of addressees thereon with the names in any lists rented by the defendant, especially since the names on rented lists were usually listed in random rather than in alphabetical order. Since the use of an optical scanner and computer to eliminate names on a list involves the copying of the names (by their translation into symbols stored on the magnetic tape), and since the owner of the rented list will not permit that list to be copied, the defendant found that it was impossible, simply impossible, for it -- or others -- to comply with a prohibitory order insofar as the use of a rented list is concerned.

Moreover, many mailing lists were not available for purchase, being available for rental only, no matter what the price. When a list is sold, the price is many times the

rental charges. The operation and the effect of the statute has been that, after defendant learned that it could not comply with the law and also use a rented mailing list, the defendant was forced to abandon the use of most rental mailing lists. It could only use a rented mailing list if and when the owner of such list had himself put the list on magnetic tape, so that the computer could be used to check off the names of persons as to whom prohibitory orders were issued and outstanding. Thus, the defendant has been forced into the position where it can mail to persons on mailing lists, which are available for rental, only if and when such lists are on tape. The defendant has followed this practice since 1970. Defendant estimates that, because of this limitation, it and the corporation which processes its mailings, and which now owns its mailing lists -- RAS ENTERPRISES, INC. -- have been deprived of the right to mail to somewheres between 5,000,000 and 10,000,000 persons. Even allowing for a 20% of overlap of names on mailing lists already used with those on such rented mailing lists, the operation and effect of the statute has been to prevent mailings for First Amendment materials to approximately 8,000,000 persons within the United States within the last three years.

Further, in this connection, we note that on occasion, the rented mailing lists would not be delivered to the defendant or its computer house, but the owner thereof would insist upon having names and addresses on such list printed or typed by itself or others and sent to separately owned letter shops or mailers where the material to be mailed is inserted in the envelopes, or is otherwise packaged, and mailed. We have included in our estimate above such mailing lists which also are obviously unavailable to the defendant, because of its effort to comply with the Pandering Law.

We submit that the Pandering Law was not intended to apply to a second mailing made to a name on a list rented by the sender. If it was intended to so apply, then defendant, who had exercised the greatest care, would be deprived of liberty and property without the due process required by the Fifth Amendment, since the only way to avoid second mailings to a name on a rented list is by so limiting the use of rented lists as set forth above and thus effectively restricting the freedom of speech and press of the defendant herein.

There was a second problem which became apparent. In order to print out an entire protester-free list, the list would have had to be printed out anew at least once every 30 days. This particular aspect of the matter itself would have cost at least a minimum of $18,000 per year. To circumvent this cost, three carbon copies of each print-out were acquired at the comparatively nominal costs of $2.00 per 1,000 names. If the mailing label on the second alleged mailing is identical to that on the first alleged mailing, this occurred because the mailing was made due to the second mailing having been made before a new protester-free list could be printed out, it being impossible and illogical to coordinate dates of mailing with the effective dates of prohibitory orders.

Accordingly, in order to comply with this unconstitutional provision of the law, the use of carbon copies of mailing labels was abandoned by defendant in 1970.* Thus,

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*Such use has recently been resumed, but only to the limited extent that carbon copies are made of names and addresses only of those who have bought from us, as to whom the Pandering Law does not apply, Cf. Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp. 297 (E.D.N.Y. 1971). And in any event we have finally worked out a method for their use anyhow, so as to still comply with prohibitory orders.

the law unreasonably and substantially illegally prohibited the use of the mails for First Amendment purposes.

A third problem which was run into was that the optical scanner cannot exercise any judgment. Thus, if the name appearing on the prohibitory order was R. A. Jones, but the mailing list contained the name of Richard A. Jones, the computer would simply not recognize the name.

To avoid this problem, and similar problems, the only way to prevent second mailings was to so program the computer that all persons with the same last name at the same address should not get mail. This was done in 1970.

Of course, the slightest variation of an address would have rendered this an illusory protection; thus, if our attorney's wife Marilyn W. Levy, Esq., who at about that time had an address of 1133 Sixth Avenue, had appeared on a different mailing label as having an address of 1133 Avenue of the Americas, New York City -- the same actual address, but different to a computer -- a mailing to her could not have been prevented.

In the meanwhile, the Supreme Court of the United States had upheld the constitutionality of the Pandering Law though, as we noted, without any knowledge of the operation

and effect of the law. The defendant, even though it had pioneered the way in presenting a method by which an unwilling recipient could get its name removed from its mailing list without any expense and minimal effort, had to even further circumscribe its own First Amendment rights in order to even better comply with the law.

To even better comply with the law, an improvement was made on or about November 14, 1970. Under this new system, the computer sought out the first five letters of the last name of the addressee, and automatically removed from the mailing list the name of any person at the same address who has the same first five letters in his last name -- even if such other persons had requested mailings from the sender, and even if their first names were different and were in fact different people. Thus, if one Murray Schwartz at 295 Madison Avenue, New York City, had obtained a pronibitory order, the computer would have automatically prevented mailings to all persons at that address the first five letter of whose last name are SCHWA. Thus, in order to comply with the law, mailings

to Irving H. Schwartz and Herman Schwartzman as well as to Schwartz, Schindler & Levy, all existing persons or firms at that address, would have been prevented.

Thereafter a still further improvement was made, effective in the Spring of 1971. This eliminated from the RAS mailing lists the names of all persons as to whom the following three factors also appeared in the Government list supplied under the Goldwater Amendment or in the names supplied by the Prohibitory Order:

A. The first five letters of the last name coincide.

B. The first three digits of the street address coincide, and

C. The zip codes coincide.

Thus, in addition to weeding out the names and addresses of the persons mentioned above, all persons within the zip code area (10017) whose last names began with SCHWA at any address in that zip code area which began with 295, would be eliminated from the RAS list. Thus, any Schwartz, Schwartzman, Schwartzberg, Schwarz, etc. at 295 East 42nd or 295 East 41st,

etc., etc., would not receive mail, even though some of such persons might be customers.* The problem is also solved of preventing a mailing to say,1133 Avenue of the Americas, when the address we were given was 1133 Sixth Avenue, since the numbers of the street address control. We have thus succeeded in avoiding the type of problem set forth in the annexed page from "Popular Photography."

Of course, there is still opportunity for error. A mistake may be made by the typist who types up the material for the optical scanner, in putting down the name and/or address; a mere speck of dust on a computer tape may prevent the elimination of one or many names. It is estimated that there will be a computer error factor of one half of one percent (0.5%) which cannot be eliminated. (The Government, indeed, has made many errors in the tapes it supplied RAS under the Goldwater Amendment).

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* Our computer house has advised us that at Co-Op City, a gigantic housing development in New York City which our computer house programmed, there were last names duplicated in 35-40% of the cases. We note that should a Schwartz in Co-Op City obtain a prohibitory order, many hundred (possibly several hundred) other Schwartz's in Co-Op City could not get a mailing from us -- and that this would continue perpetually even after the one objecting Schwartz moved out.

AFFIDAVIT OF RICHARD S. SCHWARTZ

I should perhaps also add that when we receive a complaint of a violation of a prohibitory order, we once again feed the name and address of the addressee into the computer, even though in almost all probability it is already on our tapes, and though the second mailing was due to matters beyond our control (e.g., the second mailing was to a new address when the Postal Service had only ordered cessation of mailing to an old address).

That our program seems to be working is evident from the fact that in November, 1971, only four complaints were issued -- one of which seems to be explainable only by computer error, two of which were caused by Post Office error, and one of which cannot be explained because we have not been furnished with sufficient documentation, according to advice from Herbert Monte Levy, Esq., our attorney. In October, 1971, only one complaint was received. So, too in September, 1971.

Thus, all of the corporations having their mail processed by RAS Enterprises, Inc. including that of Pent-R

Books, Inc., in order to comply with the law, have taken precautions which result in elimination of mailings even to persons who may desire such mailings. We would estimate that that would include some 50,000 persons.* Under such circumstances, in addition to the clear violation of its First Amendment rights, it is further clear that there would not or could not be any willful violation of a prohibitory order. Accordingly, it would seem that this case would be moot, because any judgment, when rendered, could not have any practical legal effect upon the then existing controversy. Indeed, there is simply no controversy here.

To further note the good faith of defendant, we note that, as already stated, Pent-R did attempt to comply with all prohibitory orders, constantly tightening its preventative measures designed to insure that mail would not reach those who did not want to receive its mail. Moreover, when

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* This does not take into account persons in the Armed Forces who may be deprived of mailings, it would seem that one person named "Smith" or "Jones", by obtaining a prohibitory order, would effectively preclude all persons with such a respective last name at such APO address from receiving any mail from us. We have no idea how many persons have the same APO address; we are thus unable to come up with a figure for this problem.

AFFIDAVIT OF RICHARD S. SCHWARTZ

the Goldwater Amendment came into operation, requiring that publishers disseminating sexually oriented advertisements must subscribe to a list of persons who did not want to receive such ads, defendant was the first -- and for a long time the only -- subscriber to that list, which subscription cost it $10,000 a year.* While continuing to comply with that requirement, Pent-R tested the statute before a three Judge Federal Court; during the course of those proceedings, the Government constantly modified its regulations, under the Goldwater Amendment so that that case was rendered moot and dismissed. One of the modifications followed Pent-R's practice, begun long before the statute was enacted or became effective, of giving a warning notice of the type of contents on an inner sealed mailing envelope. Pent-R Books, et al v. U. S. Postal Service, 328 F.Supp. 297 (1971). To further put this matter

*In analyzing the first such list supplied by the Government, we ascertained that 621 names on that list of 31,604 names had bought sexually oriented materials from one of the plaintiffs there on one, two, three or four occassions previously. Thus, some 2% of those on the Government list are prior buyers. Since the Government list includes names of children, if we assume 2.5 children per adult name, then some 5% on that list were prior buyers from plaintiffs there. We cannot even estimate how many on that list were prior buyers from other sources of supply. This further demonstrates Mr. Levy's thesis that persons are pressured into acting to avoid the receipt of ads for sexually oriented materials.

in context, we note that although some 200,000 prohibitory orders were issued against Pent-R, only approximately 750 complaints were ever made under the Pandering Law, according to the estimate of our attorney and the informal estimates of Postal Service officials -- an alleged violation rate of 0.375% at most. Of the some 750 cases in which hearings were held, approximately 1/3 of these resulted in dismissal in the complaint, while approximately 500 of the cases so far have resulted in the complaint being upheld by the Post Office, with or without a hearing, or some alleged 1/4 of 1% (0.025%) of alleged violations.

The defendant is a thoroughly law abiding corporation. We would estimate that it has spent by this time at least some $300,000 in order to comply with the Pandering Law, as well to comply with the Goldwater Amendment. Its vast expenditures of money, made in an effort to comply with the law, show that it is not a law breaker, but a law observer. To issue an injunction in any case such as this, which has become completely moot by the use of such a computerized method that not only are mailings to protesters avoided, but

also mailings to persons who are not protesters, would be to have the Court issue a useless order -- and an unconstitutional one at that.

I understand that it is hornbook law that a statute must be construed so as to avoid raising questions of constitutionality. We believe that we have raised substantial questions as to constitutionality in the operation and effect of the Pandering Law -- not involved in the Rowan case --, which must be faced if this Court is to issue an order. Succinctly stated, it is a fact that the law cannot be complied with except by denying the defendant its right to communicate to those who would receive its communications, and the right of those who receive such communications to receive them. We submit that the law should be so construed in this case as to mean that there is complete mootness in the case at bar, in order to avoid the raising of these questions.

We have bent over backwards to make any possible settlement with the Government. It has never suggested any deficiency in our computerized system for compliance with prohibitory orders. It has never suggested any improvement.

Since 1971, at least, it has been fully informed of our system's working. What more does the Government want from us? Our standard of attempted compliance, our actual rate of better than 99 3/4% compliance with prohibitory orders, speak for themselves. No injunction need be granted. It could have no possible effect whatsoever. Any practical suggestions for improvements in our computerization program will be gratefully accepted. Can we do more?

I now turn to some details.

I understand that according to the purported so called certified file in this case, the purported return receipt for the administrative Post Office complaint is dated However, as noted above, it was our practice and remains our practice to stamp or otherwise indicate on the envelope in which the complaint was contained, the date of its receipt by us. The date of its receipt by us, according to the envelope, which will be annexed hereto, is Oct. 30, 1969, though the date of receipt according to the purported return receipt is October 26, 1969. If we are correct in our date of

AFFIDAVIT OF RICHARD S. SCHWARTZ

receipt, then it is patent that the demand for hearing, which our attorney's affidavit indicates was sent on the date it bears, was sent in time, and that we were improperly denied a hearing before the Post Office Department in this case, a default having been taken without just cause. This raises an issue of fact warranting a trial.

WHEREFORE, deponent prays that the plaintiff's motion for summary judgment be denied, that defendant be granted summary judgment dismissing the complaint, and that the prohibitory order be vacated.

RICHARD S. SCHWARTZ

Sworn to before me this
8th day of November, 1973.

GILSOM SAFDEYE
Notary Public, State of New York
No. 34[illegible]478
Qualified in Kings County
Commission Expires March 30, 19..75

UNITED STATES POST OFFICE
PORTLAND, OREGON 97208

OFFICIAL BUSINESS

P-17
POSTAL SERVICES CENTER
MAIN POST OFFICE, ROOM 3019
PORTLAND, OR 97208

PENALTY FOR PRIV
PAYMENT OF

"ADMINISTRATION OF 39 U.S.C. 4009"

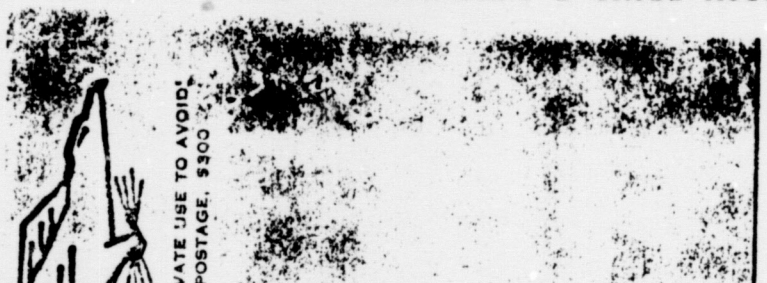
RETURN RECEIPT REQUESTED

R E G I S T E R E D

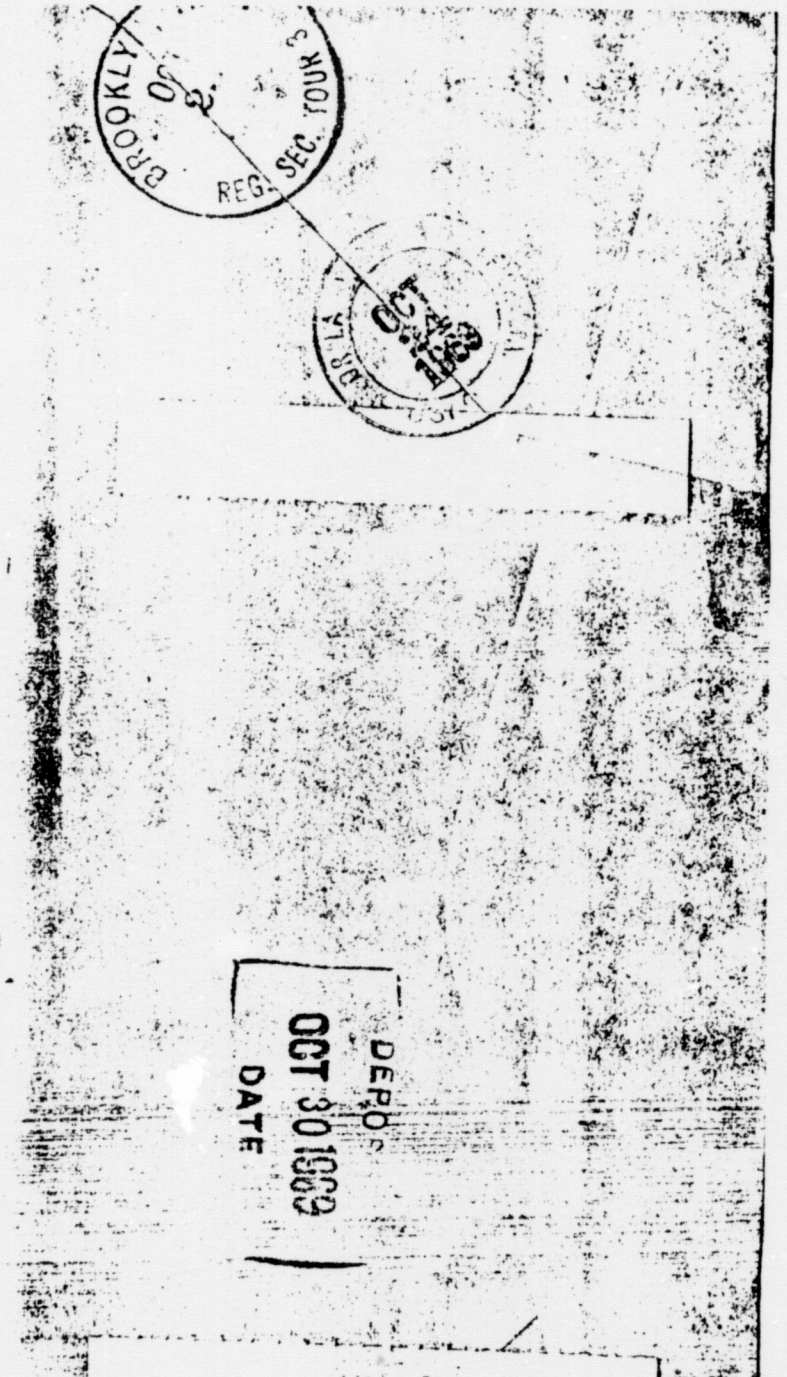
84109

Pent R Books, Inc.
PO Box 81
Brooklyn NY 11223

EXHIBITS, ANNEXED TO DEFENDANT'S CROSS-MOTION.



EXHIBITS, ANNEXED TO DEFENDANT'S CROSS-MOTION



GRAVESEND STA. N.Y.
OCT
1960

ABOUT YOUR SUBSCRIPTION

Your subscription to POPULAR PHOTOGRAPHY is maintained on one of the world's most modern, efficient computer systems, and if you're like 99% of our subscribers, you'll never have any reason to complain about your subscription service.

We have found that when complaints do arise, the majority of them occur because people have written their names or addresses differently at different times. For example, if your subscription were listed under "William Jones, Cedar Lane, Middletown, Arizona," and you were to renew it as "Bill Jones, Cedar Lane, Middletown, Arizona," our computer would think that two separate subscriptions were involved, and it would start sending you two copies of POPULAR PHOTOGRAPHY each month. Other examples of combinations of names that would confuse the computer would include: John Henry Smith and Henry Smith; and Mrs. Joseph Jones and Mary Jones. Minor differences in addresses can also lead to difficulties. For example, to the computer, 100 Second St. is not the same as 100 2nd St.

So, please, when you write us about your subscription, be sure to enclose the mailing label from the cover of the magazine—or else copy your name and address exactly as they appear on the mailing label. This will greatly reduce any chance of error, and we will be able to service your request much more quickly.

For the owners of Prestige Cameras
THESE MANUALS ARE AN IMPORTANT ACCESSORY TO YOUR CAMERA

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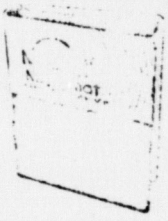

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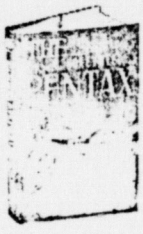
Editorial Director & Publisher of Modern Photography



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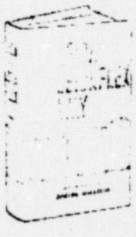
By Andrew Matheson



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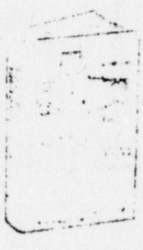
- The only source of data on the full range of Rollei cameras, accessories, materials & techniques
- Covers all major subjects such as animals, children, close-ups, color, copying, nudes, portraits, sports, theater, underwater, etc.
- Photos, tables & diagrams

$12.95

No. 62[illegible] "THE HASSELBLAD WAY"

By H. Freytag



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No.____ No.____ No.____

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Name (please print)

Address

City State Zip

Orders for $10.00 or more shipped postpaid in U.S.A. & Canada. Add 10% for overseas delivery (except APO/FPO). These manuals are also available from your favorite photo dealer or bookstore.

NEWSFRONT *continued from page 14*

in convention here that Kodak is trial marketing three-solution process for color prints. It may replace present five-solution process. Kodak is concerned about water pollution and silver waste. New process "reduces effluent volume by 40 percent," has bleach-fix that is "completely biodegradable, can be regenerated and allows efficient silver recovery." Seiler said company is working hard to make non-toxic chemicals and cut level of BOD_5. He said Kodak has managed to formulate Ektaprint C stabilizer without zinc, another potential pollutant.

NEW YORK—*Our man Rothschild to speak at communication parley*: Among panelists at 15th annual Wilson Hicks International Conference on Communication Arts (formerly Miami Conference) will be *Popular Photography*'s senior editor, Norman Rothschild. Other participants at meeting, slated for April 28-30 at U. of Miami, Coral Gables, Fla., include Gilbert M. Grosvenor, editor and vice president of *National Geographic*; Erich Hartman of Magnum; Richard Grossman, president of Grossman Publishers; Tony Vaccaro of *Look*; Inge Morath, free-lance photographer and wife of playwright Arthur Miller; Burton McNeeley, undersea photographer; John Schearer, free-lance photographer; Larry Schiller, film maker; Paul Hue, photographer from Holland; Martin Duffy, manager of design and media for A.T.&T. Co.; Marcello Ablaza, official photographer to the president of the Phillippines; Dr. Wesley Clark, dean of the School of Journalism, Syracuse University; and John Olson, staff photographer of *Life*. Conference also serves as annual meeting for American Society of Magazine Photographers.

NEW YORK—*With deep regret, we note the following deaths*:

Charles Rado, founder and president of Rapho Guillumette photo agency that represents photographers throughout the world. Rado often fostered work of unknown photographers, many of whom were exhibited at Museum of Modern Art.

Dr. Emanuel Goldberg, scientist, author, and retired director general of Zeiss Ikon AG. He emigrated from Paris to Israel, where he founded laboratory for applied optics, now known as EL-OP. He wrote *The Fundamentals of Reproduction Technique* and *The Structure of the Photographic Image*.

A. Aubrey Bodine, photo director of *The Baltimore Sunday Sun* magazine, and winner of hundreds of international photo awards. He had worked with *The Sun* papers for nearly 50 years. Many of his best pictures appeared in *My Maryland*.

Kyoichi Sawada, U.P.I. photographer, killed in Pnompenh, Cambodia, while covering the war. He won Pulitzer Prize in 1966 for picture of Vietnamese mother fleeing enemy attack. ○

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

AFFIDAVIT

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.
----------x

STATE OF NEW YORK)
:ss.:
COUNTY OF KINGS)

HYMAN GOLDMAN, being duly sworn, deposes and says that:

I am and at all times from 1968 to date have been employed by PENT-R BOOKS, INC., sued as PENT-R-BOOKS, INC. herein, as a messenger. Accordingly, I was the person who most often went to the Post Office to pick up registered mail, which was held for defendant at the Post Office Registry window. I have been asked to describe the way in which this was handled. I now do so.

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION

When I asked to sign a return receipt, it was not my practice to write down the date on the return receipt on which the material was received. This would usually be written, by stamp or otherwise, by the Post Office employee behind the Registry window. Sometimes this was done while I was waiting, at other times dates were stamped on some receipts after I had signed them, or while I was still signing other receipts. At still other times, the person behind the window would stamp the date of receipt, I assume, after I left, for such person had not stamped the receipts with the date prior to to my leaving.

I did not have an opportunity to always see what material I was getting before I signed for it. On numerous occasions, particularly when a lot of registered mail was received, -- as was the case in 1969 particularly --, I was on many occasions given a batch of return receipts to sign at the same time, or a manifest sheet listing numerous items. Only after I signed them would I then be given the materials that I had supposedly signed for. Thus, on numerous occasions, I had no opportunity whatsoever to check to see whether all of the material for which I signed had been received.

AFFIDAVIT OF HYMAN GOLDMAN IN SUPPORT OF DEFENDANT'S CROSS-MOTION

There were of course many opportunitities for errors. Thus, the person behind the window could have put on the wrong date of receipt; I might not have been given a mailing piece for which I signed; I might have been given a mailing piece for which I signed one or more days after the date on which the receipt was supposedly stamped. And the opportunity for errors to be had was aggravated by the fact that, in 1969, there were frequent occasions when I had to sign for between 30 and 50 mailing pieces at the same time.

Thus, the fact that a return receipt bears a particular date does not necessarily prove that it was received by Pent-R Books, Inc. on the date that the return receipt shows.

Hyman Goldman
HYMAN GOLDMAN

Sworn to before me
this 2nd day of November, 1973.

Notary Public, State of New York
No.
Qualified
Commission Expires
19 75

MEMORANDUM AND ORDER BY DOOLING, D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA,

-against-

PENT-R-BOOKS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - -X

72 C 610
(OETKEN)
MEMORANDUM
and
ORDER

Appearances:

LLOYD H. BAKER, Esq. (DAVID G. TRAGER, Esq., United States Attorney, of Counsel) for Plaintiff

HERBERT MONTE LEVY, Esq., for defendant

DOOLING, D.J.

In this action to obtain an order commanding compliance with a Post Office Prohibitory Order issued under 39 U.S.C. § 3008 (formerly § 4009), the plaintiff has moved for summary judgment on the administrative record, and defendant has cross-moved on affidavits. The principal objections of defendant are those raised and disposed of in 69 C 1362, 72 C 606 and 72 C 609, and what has been said in those dockets need not be repeated here.

The only point made in this case by defendant apart from those passed on in the above dockets is that defendant's allegedly timely mailed Request for Hearing was ignored. It was mailed to the Postmaster at Portland, Oregon, from New York City not more than ten days after the receipt of

the complaint. In this case, however, remand to consider the timeliness of the mailing is not appropriate. The form of objections allegedly sent to the Postmaster raised no points not resolved against the defendant in the dockets referred to above except the claim that the first mailing was "Refused" and, therefore, the addressee could not have formed the opinion that it was a pandering advertisement. Apart from the fact that the warning envelope itself may have been signal enough to the addressee, the word "Refused" does not imply that the envelope was not opened: on the contrary the more natural inference is that it was refused because it had been opened and had been examined.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted and defendant's cross-motion is denied. A form of judgment has been approved for entry by the Clerk.

Brooklyn, New York
July 26, 1974.

U. S. D. J.

JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

PENT-R-BOOKS, INC.,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ JUL 29 1974 ★
TIME A.M.
P.M.
CLOSED
73 C 610
(OETKEN)
JUDGMENT
M'FILMED

This action came on for hearing on the cross-motions of the parties for summary judgment before the Honorable John F. Dooling, Jr., District Judge, and the motion of plaintiff having been granted and that of defendant having been denied in the decision duly rendered, it is

ORDERED and ADJUDGED that defendant PENT-R-BROOKS, INC. its agents and assigns (1) refrain from any further mailings to E.R. OETKEN, 1055 Austin Avenue, Idaho Falls, Idaho 83401,

or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder or resident; (2) immediately delete the above-named party from all mailing lists owned or controlled by it, its

JUDGMENT

agents or its assigns; and (3) immediately obtain from any sale, rental, exchange or other transaction involving mailing lists bearing the name of the party named above.

Brooklyn, New York

July 26, 1974.

Approved;

U. S. D. J.

CLERK

UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF NEW YORK.

----------X

UNITED STATES OF AMERICA,

Plaintiff,

v.

PENT-R-BOOKS, INC.,

Defendant.

----------X

CIVIL ACTION NO. 72C 611.

DOCKET ENTRIES

U.S.A. v. PENT R BOOKS INC.

72C 611

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
5/9/72	Complaint filed. Summons issued.	1JS6
-26-72	Summons returned and filed. Deft srvd 5-25-72.	2
-27-73	Pltff;s notice of motion ret 10-15-73 and memo in support of	
	motion for summary judgment filed.	3/4
1-29-73	Notice of cross motion and memorandum in support of deft's	
	cross motion for summary judgment filed.	5/6
7-29-74	By DOOLING, J. - Memorandum and order dtd 7-26-74 directing	
	Clerk to enter judgment in favor of pltff filed.	7
7-29-74	JUDGMENT dtd 7-26-74 granting permanent injunction against	
	deft filed.(p/c mailed to attys).	8
9-19-74	Notices of appeal filed. Duplicates mailed to C of A & pltff.jn	9/10

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R BOOKS, INC.,

Defendant.

- X

COMPLAINT

Civil Action No.

Plaintiff, UNITED STATES OF AMERICA, by its attorney, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, complaining of the defendant, alleges:

1. This Court has jurisdiction of this action pursuant to Public Law 90-206, Sec. 301 and Title 28, U.S.C., Sec. 1345.

2. The defendant is a New York corporation having an office for the conduct of business at 203 Kings Highway, Brooklyn, New York.

3. On or about June 23, 1969, defendant mailed or caused to be mailed through the U. S. mail to B. W. S. Dodge, Houston, Texas (hereinafter referred to as "addressee") material offering for sale certain advertisement for Photographic Manual of Sexual Intercourse.

COMPLAINT

4. The said item was mailed from Brooklyn, New York, within the Eastern District of New York.

5. The above-described mailing consisted of photographic advertisements which the addressee believes to be erotically arousing or sexually provocative.

6. The addressee requested the Postmaster General to issue an order directing defendant, its agents or assigns, to refrain from further mailings of such material to him.

7. Upon receipt of this request and pursuant to Public Law 90-206, Sec. 301, on June 26, 1969, the local Postmaster, by order of the Postmaster General, issued Prohibitory Order No. 2214, which ordered and directed defendant, its agents and assigns, to delete his name from any sales or transactions involving lists bearing his name, effective 30 days after receipt of the order.

8. A copy of the order was mailed to defendant by registered mail on or about the date it bears.

9. Thereafter, the Postmaster General had reason to believe that defendant or someone acting on its behalf violated the order.

10. On or about September 26, 1969, in violation of Prohibitory Order No. 2214, defendant, or someone acting

on its behalf, mailed or caused to be mailed through the United States mail to the addressee, material such as that described in paragraph 3 of the complaint.

11. On October 15, 1969, the local Postmaster, by order of the Postmaster General, issued a complaint advising that evidence had been received that defendant, or someone acting on its behalf, had violated Prohibitory Order No. 2214, and advising defendant that any response for hearing had to be filed within 15 days.

12. A copy of the complaint was mailed to defendant by registered mail on or about the date it bears.

13. Defendant did not request a hearing or otherwise respond to the complaint.

14. On November 3, 1969, a determination was made that defendant or someone acting on its behalf had violated Prohibitory Order No. 2214.

15. A copy of the determination was mailed to defendant by registered mail on or about the date it bears.

16. The Postmaster General thereafter requested the Attorney General, pursuant to the provisions of Public Law 90-206, Sec. 301, to make application to a district court of the United States for an order directing defendant to comply with the order.

COMPLAINT

WHEREFORE, plaintiff, UNITED STATES OF AMERICA, prays:

a. That the court enter judgment herein requiring defendant, its agents and assigns, to comply with Prohibitory Order No. 2214, and more specifically, that this Court order and direct defendants, its agents and assigns, in conformity with this order to cease and desist from making any further mailings to the designated addressee from all mailing lists owned or controlled by defendant, its agents or assigns, and to refrain from selling, renting, exchanging, or engaging in any other transaction involving mailing lists bearing the name of said addressee.

b. That the Court grant to plaintiff such other and further relief as may be just and proper.

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By
Lloyd H. Baker
Assistant U. S. Attorney

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R-BOOKS, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - X

NOTICE OF MOTION

72 C 611

PLEASE TAKE NOTICE that upon the annexed certified copy of the record of the proceeding in the Post Office Department, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a term for the hearing of motions to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, Courtroom 8, on the 15th day of October, 1973, at ~~9:30~~ 10 o'clock in the ~~forenoon~~ afternoon of that day, or as soon thereafter as counsel may be heard, for

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

an order pursuant to Rule 56 granting summary judgment to the plaintiff, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: Brooklyn, New York
September 26, 1973

ROBERT A. MORSE
United States Attorney
Attorney for the United States
of AMERICA

By:

_____
Lloyd H. Baker
Assistant U. S. Attorney

TO:

HERBERT MONTE LEVY, ESQ.
295 MADISON AVENUE
NEW YORK, NEW YORK 10017

1724a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS.

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT

GC-6814

Washington, D.C. 20260

March 27 19 70

CERTIFICATION

I hereby certify that the annexed documents constitute true copies original records which are in the official custody of the Post Office artment, to wit: P.O. Docket No. R-11, H-65. (B.W.S. Dodge).

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, on the day and year first above written.

I. F. Kardos
Deputy Assistant General Counsel
Mailability Division

2159

1725a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

ORDER

In the Matter of Violation of
Prohibitory Order No. 2214
Issued Against

Pent-R-Books

Box 81

Brooklyn, N. Y. 11223

and agents or assigns, pursuant to authority of Title 39, U.S. Code, §4009.

P. O. Docket No. B-11, B-65

Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned Prohibitory Order.

CARL HUBER, OFFICER IN CHARGE
BY:

BURL C. MILLER
Postmaster

SUPT. MAILING REQUIREMENTS
HOUSTON TEXAS 77002
City State ZIP Code

[POSTMARK]

Dated: November 3, 1969

NOV 3 1969

POD Form
May 1968 2154

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

R 11-4-65

Case No. 2314

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POD Form 3811 Apr. 1967

c65—16—71648-10

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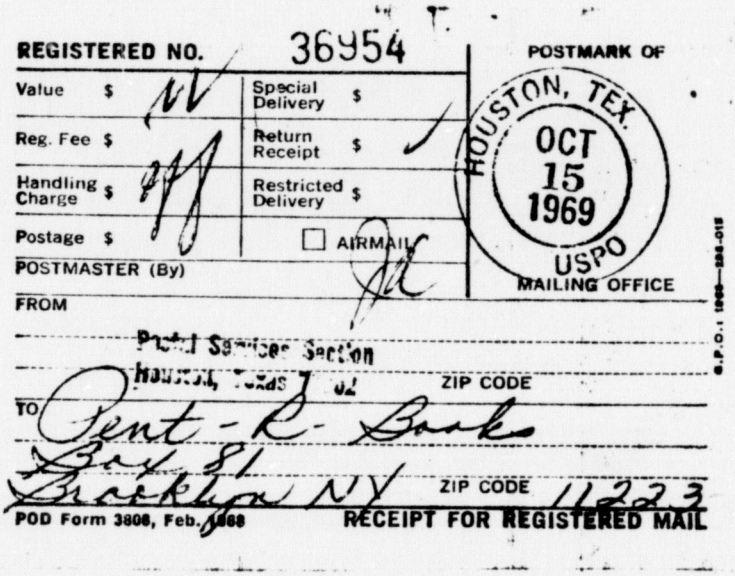

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FROM

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TO Sent-R-Bank

Box 81

Brooklyn NY ZIP CODE 11223

POD Form 3806, Feb. 1968 RECEIPT FOR REGISTERED MAIL

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POST OFFICE DEPARTMENT

COMPLAINT

In the Matter of Violation of
Prohibitory Order No. 2214
Issued Against

Post-R-Books, Inc.

Box 81

Brooklyn, N. Y. 11203
and agents or assigns.

On behalf of:

R. H. S. Hodge
Complaining Addressee

P. O. Docket No. S-11, S-65

On the 30th day of June, 19 69, you received Prohibitory Order No. 2214, copy of which is attached hereto, issued against you and your agents or assigns under authority of Title 39, U.S. Code, §4009, upon request of the above-named addressee.

Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:

1. By further mailings to the addressees listed in the order. See Exhibit attached hereto.
2. ~~You failed to immediately delete from mailing lists owned or controlled by you or your agents or assigns the names of the addressees listed in the order. See Exhibit attached hereto.~~
3. ~~You or your agents or assigns have sold, lent, exchanged, or made other transactions involving mailing lists bearing names of addressees listed in the order. See Exhibit attached hereto.~~
4. ~~Other (specify)~~:

[Strike inapplicable items].

Any response to this Complaint or request for a hearing with respect thereto must be filed, in writing, ~~in the Office of the Regional Counsel, Post Office Department,~~ (Address)

with the undersigned postmaster, within fifteen (15) days after receipt of this Complaint. Attached hereto is copy of the Department's Rules of Practice relative to answering this Complaint and requesting a hearing in the matter.

GRANVILLE W. ELDER, POSTMASTER
BY:

Earl C. Miller
EARL C. MILLER
Postmaster

SUPT. MAILING REQUIREMENTS
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City State ZIP Code

[POSTMARK]

HOUSTON, TEX. OCT 15 1969 USPO

Dated: October 15, 1969

POD Form 2153
May 1968

PEINT-R BOOKS INC.

P. O. BOX 81
BROOKLYN, N. Y. 11223

REC'D Sept 26-69
B. Dodge

BROOKLYN N. Y.

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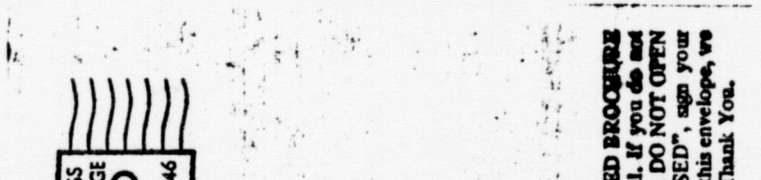

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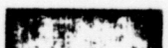

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PART TWO

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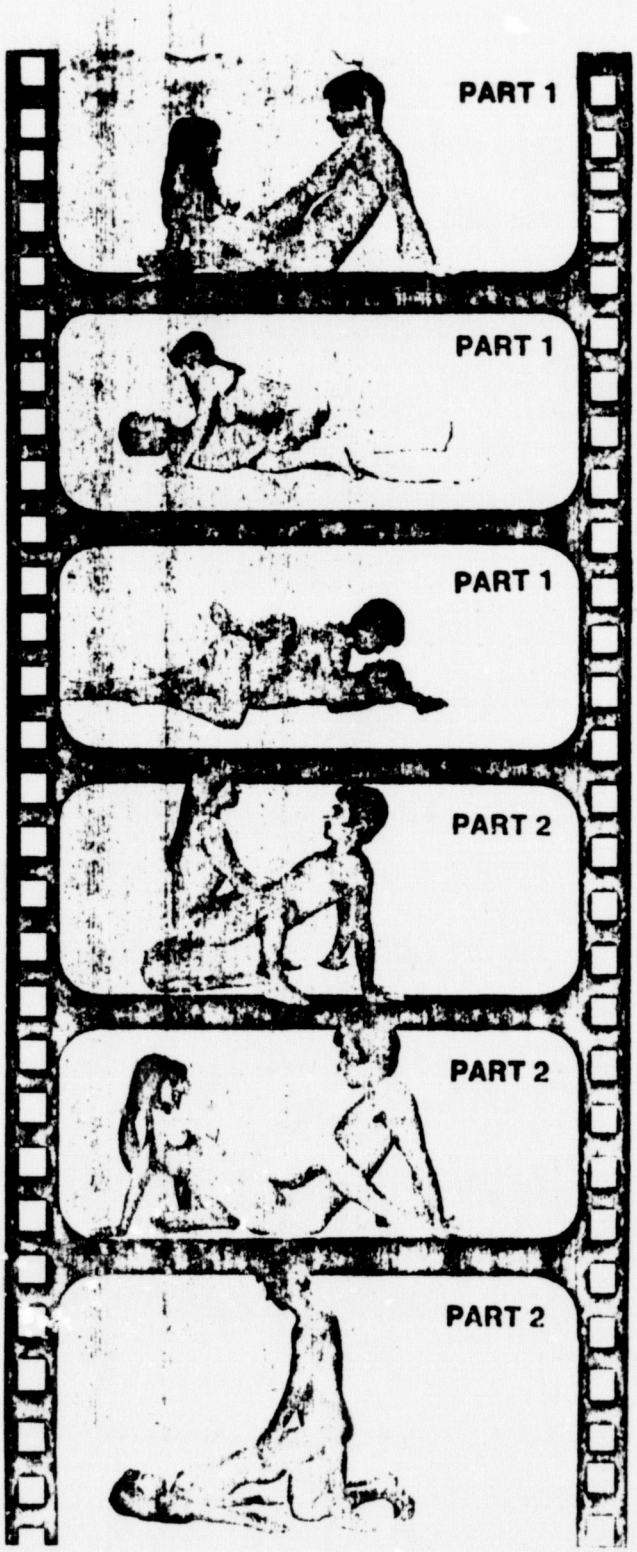

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D. L. Caruth

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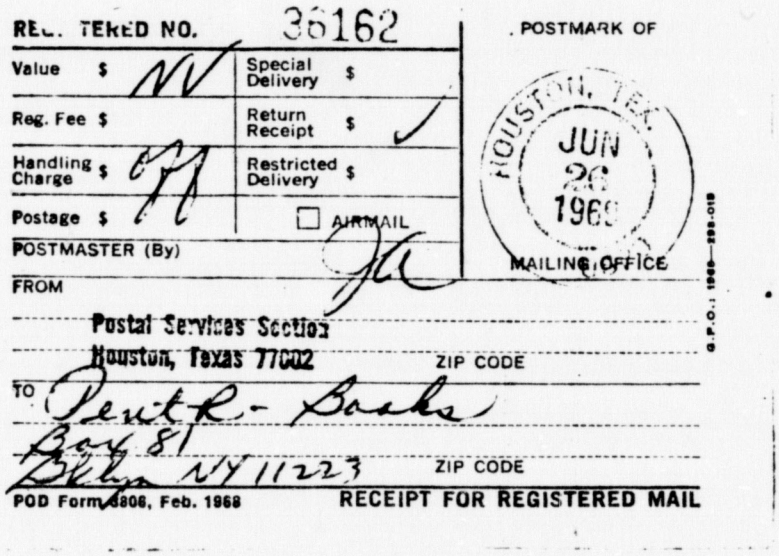

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"This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assured me that this book would be offered only to adults." Dr. T.M.E.

"This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.E. Los Angeles, Calif.

"I only wish I had seen this book early in my married life. My marriage finally failed for just those reasons which are covered in chapter Seven of this book. If only I had known what this book now makes so clear." Divorcee who was asked to comment.

"We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thanks very much." J.B. & C.K. Chicago, Ill.

TABLE OF CONTENTS

With the final chapter just complete a few short weeks ago, *THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE* is the latest, most up-to-date sex manual on the market. It is the sex of today which is presented to you; this is no compilation of ancient wisdom. People change, even the techniques of sex change. This is today's guide to sexual intercourse written for today's people! We ask you to review the table of contents.

Preface
Chapter I ..... History of Sex
Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of S...
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral-Anal Sexuality
Chapter IX ..... Male Oral-Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
Chapter XII ..... Sexual Intercourse During Menstruation and Pregnancy
Chapter XIII ..... Satisfying Substitutes
Chapter XIV ..... Sexual Intercourse for the Old, Ill and Handicapped
Chapter XV ..... Consolation: Your Own Hand

We venture to suggest that very few other books offer the complete coverage of this single volume. The above table of contents hints at the scope of what is offered. Each chapter is a model of clarity, down-to-earth language which takes you instantly to the heart of the matter. This book was not written for the professional, although we fully expect that many professionals will insist upon having a copy of this book in a prominent position on their bookshelves.

Those who are considering marriage will want a copy of this book. Those who are married and are just beginning to find a certain tedium in their connubial bed will want to seek here the vital answers to their problem. Those who are ill, old, or handicapped will realize that their sex life need not be the entwining frustrating problem it now seems to be.

Perhaps you have feelings which you think are unnatural, even abnormal. Yet your sex nature cries out for fulfillment. Which way shall you turn? What can you do? You can read this book and find the answer!

OUR GUARANTEE

TRY IT ... DON'T BUY IT ... With our money back offer! We have put a great deal of time, money and effort into this book. We have strong feelings about this book. We feel the book has long been needed in our society of sexual confusion and maladjustment. We feel this book will be of immense value to thousands of men and women. To convince you of our sincerity and of the faith we have in this marvelous book we make this simple, straightforward guarantee to you. Order a copy of *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE."* Read it. Then you decide! If after reading this book, you do not feel you have gained knowledge of sex, if you and your partner are not enjoying more pleasure of sexual excitement and pleasure, simply return the book. Every penny of your purchase price will be immediately refunded. What could be fairer than that? You have nothing to lose but the few moments it takes to mail the enclosed order form. If sex is an important part of your life, review it to yourself and to your sex partner to take advantage of this amazing book of sexual knowledge. Please act today! A penny postcard will suffice. Enclose 1 for your convenience. And please remember ... you have nothing to lose because if you are dissatisfied for any reason, you return your book and receive your money back without question or delay. Please order today! Both you and your partner will be glad that you did!

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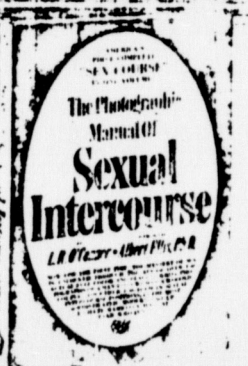

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I understand that if I am not satisfied, I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

I hereby certify that I am over the age of 21 years and I have signed on that effect below:

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A MAJOR BREAKTHROUGH IN SEX EDUCATION!

The Photographic Manual Of Sexual Intercourse

BY [illegible] O'CONNER--INTRODUCTION BY ALBERT ELLIS, PH.D.

NOW FOR THE FIRST TIME THE MYSTERY OF SEX IS UNLOCKED THROUGH THE AID OF [illegible] PAGES -- OVER [illegible] ACTUAL PHOTOGRAPHS *(in [illegible] 40 Full Page Photos & 16 [illegible] Page Full Color Photos)* OF A LIVE MAN AND A LIVE WOMAN TO GET[illegible]R IN [illegible] SEXUAL INTER[illegible] POSITIONS! *THIS IS TRULY AMERICA'S FIRST COMPLETE [illegible] GUIDE [illegible]*

Dear Sir,

No one is born with knowledge of how to engage in Sexual Intercourse! How then is one to learn?

The schools, up until at least very recently, have completely and purposely ignored sex education. Ask a school principal or school board official and he will say, "We leave that instruction to parents." Ask a parent if he or she is teaching sex education to their children and you may hear ... "Don't worry, she has time" ... or ... "He'll learn" or "Ask his father, that's his job!" And if the parents [illegible], where is sexual information and knowledge to be obtained? Would you say the [illegible] yard or hall, the stoop, the candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear a story of someone's sexual experience. Sneak a look at a few pornographic pictures. Listen to a few lines dropped in a movie or picture. Listen to TV comedians' adult jokes. And above all shall we allow our youth to hear every old wive's tale, every untruth, every misconception, every fallacy. And then, shall we pat ourselves on the back for we have protected [illegible] morality? We have protected our society from information on sexual intercourse. Naturally, we do do our son or daughter is married [illegible] some intercourse happenings, there will have the wedding ceremony with a complete [illegible] broad knowledge of sex. No one stands to take credit for this knowledge. No one seems to know how our new [illegible] couple has obtained sexual knowledge. (In fact, no one knows if even newly married couple has obtained sexual knowledge.) Let us all hope that our mythical couple has a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something private, something personal, something one person does not quickly reveal to another. In far too many cases, a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is [illegible]! Premarital pregnancy is at its highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our movie theatres are showing lesbian and homosexual features to packed houses. *DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL* we ask again. We think yes, most definitely yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE TRULY NECESSARY?

We say yes ... because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indispensable aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader so that the reader may examine them and come to his or her own conclusions. We feel that to publish our book *"[illegible] PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"* without photographs would be a disservice to our readers and would confuse rather than enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It is not written for beginners or young adults much of the information it contains would be misunderstood by an adult who has the responsibility of teaching the young or inexperienced. This book was designed for adult men and women, even with years of sexual experience, so that they can have been doing wrong and what they could and should do to give their mate more sexual pleasure, complete sexual satisfaction and to inspire their mate to new love, [illegible] and happiness.

The following [illegible] will give you additional information on the contents of the book. We have also enclosed an order form for your convenience.

We suggest that you order a copy of *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"* read it, show it to your doctor and if you decide that it does not deserve a permanent place on your bookshelf, simply return it for an immediate refund of your money. It's as simple as that. Our experience has shown us that if we offer a product of this nature, we won't get many returns. You have absolutely nothing to lose and a great deal of knowledge and happiness to gain.

With [illegible] personal good wishes,

Donald Alvin

Copyright 1967 Pan R Books Inc [illegible] P.O. BOX [illegible] GPO [illegible] BROOKLYN, NEW YORK [illegible]

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

A BREAKTHROUGH IN SEX EDUCATION!

No dolls, no drawings, no illustrations, no pencil sketches, no partially obscured over-printed photographs, no tracing where one sheet must be placed upon another, no men and women wearing skin tights, no trucks where men and women appear in the photographs separately! Now, for educational purposes only, over 100 coital positions are clear! photographed for instruction purposes in over 150 large clear photographs of a real living nude man and a real living nude woman, a married couple, together engaged in sexual love coital positions with accompanying descriptive text in the most sophisticated, modern and up to date sex manual ever published!

AVAILABLE FOR THE FIRST TIME TO THE ADULT GENERAL PUBLIC! This brand new just published giant compendium of sex you will find one of the most informative, educational, instructive, eye-opening and mind clearing sexual manuals that you have ever seen or read. It offers the frankest, clearest, most detailed and explicit information through words and actual photographs on *"HOW TO ENGAGE IN SEXUAL INTERCOURSE"* that has probably ever been written! Over 100 coital positions are frankly described in plain language and photographed in over *150 FULL COLOR AND BLACK & WHITE DETAILED PHOTOS!*

THERE HAS NEVER BEEN A BOOK LIKE THIS BEFORE!

Many will call *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"* America's First Sex Course." Because for you and your wife, that is exactly what it can be. A step by step specific course in words and clear concise photographs of how to engage in the many forms of physical love and sexual intercourse! It can turn dull confused routine "quickie" sex into exciting sexual episodes which continue to improve each time and provide far greater degrees of pleasure and satisfaction than you or your wife ever thought possible!

Here at last, are the techniques which can transform the staleness apathy and boredom of the marital act into a series of invigorating refreshing, fulfilling experiences ... each more thrilling than the last!

The Photographic Manual Of Sexual Intercourse will teach you step by step, in minute detail, each touch, each movement, each kiss, each sensitive area of the body, each technique available to you for giving your mate and yourself new heights of sexual enjoyment and contentment. More, in fact, than you ever thought possible!

NOW! Learn from down to earth solid straight no punches pulled plain language facts and over 150 clear educational Full Color and Black and White photographs the unusually helpful facts you should know about the many varied aspects of sexual intercourse!

Now for the first time in any book you can see with your own eyes, large, full color and black and white actual photography the [illegible] to achieve exactly of special purpose and sexual effects!

Discover the positions that narrows the vaginal opening, giving the man more stimulation!

Learn the position that automatically forces the woman's thighs to add to penile stimulation!

Discover the positions which most directly excite the clitoris!

Find out what position holds the male organ after climax, preventing rapid contraction of the organ!

Learn the position that allows the penis to penetrate to the neck of the uterus while at the same time providing even more sensation from the caressing touch of the scrotum moving upon the woman!

Learn the position that holds a partial erection most firmly!

This is only a partial list of what the photographs and text will teach you in this amazing new book!

OVER 150 FULL
& WHITE PHOT
HOW TO
MARITA

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

Too many married couples are in the doldrums of an again[illegible] "quickie" unembellished intercourse with no variations [illegible] ations! This book will take you out of the sexual rut and in[illegible] of fresh new youthful ex[illegible] sexual activity!

IMAGINE YOURSELF CONSISTENTLY SATISFYING YOU[illegible] NER AT LEAR BEYOND HER OR YOUR WILDEST EXPECTATIONS! Why not enjoy all the wholesome, healthy thoroughly satisfying sexual delights that are available to you and your sexual partner? It's all so easy and so natural provided you forget the prejudices and fallacies of the bygone eras and recognize the fact that just as there is more to life than eating and sleeping, so there is more to sex than mere "quick" intercourse! And this is precisely the point this book brings home to you with absolute clarity, detail and the frankest most up-to-date and modern information that is available to the adult general public!

THIS IS NOT A LONG-WINDED BOOK OF DULL THEORY! The "Photographic Manual of Sexual Intercourse" is a clear, live, dynamic, detailed *"HOW TO DO IT"* manual of step by step practical instruction. It teaches you, in plain language, direct and to the point, precisely what to do and how and when to do it to increase not only your own pleasure and satisfaction, but the pleasure and satisfaction of the one you love!

This book has one main purpose, to teach you how to derive [illegible] pleasure, excitement, sensation, ecstasy and satisfaction [illegible] intercourse. It is definitely NOT written for perso[illegible] thrills or those seeking to "ogle" at pictures of per[illegible] sexual intercourse!

HERE'S WHAT THIS BOOK CAN DO FOR YOU!

1) It can help you develop a healthy life-long attitude toward sex! This healthy attitude can improve your general health, both mental and physical.

2) It can help you learn how to become a successful "lover husband" and help you to achieve greater success and happiness in every aspect of your business and personal life!

3) It can help you learn how to experience maximum sexual satisfaction from the sex act.

4) It can help you learn how to correct any problem of sexual incompatibility in your marriage! You can learn what causes certain sexual problems and complications and how to avoid and deal with them.

5) It can help you learn the secret of enjoying sex-love happiness in the years ahead. How to keep the fire burning and how to keep your sex life from becoming dull and monotonous!

You can learn numerous ways to prolong the act of intercourse. You can learn how to help your wife to achieve a fuller orgasm. How to arouse her to new found passion and how she can learn to arouse you to a new vitalized sexual relationship. You and your wife can both learn through words and photographs what to do and what NOT to do to become a more accomplished lover and sex partner.

And Now, you can also learn with the aid of text and photographs, how to obtain complete sexual satisfaction even *WHEN INTERCOURSE IS NOT POSSIBLE!* Yes, this is practically a complete guide to a happier sex love life for married couples! This is the *HOW TO DO IT* book in the marriage and sexual arts! It makes most other text on the subject obsolete!

SEXUAL KNOWLEDGE IS SEXUAL POWER! The vivid detailed photographs in this book show with utmost clarity how to adjust postures for the best possible matching of organs, how to make the sexual side of marriage more vibrant by introducing a variety of caresses and positions into the sexual act. Men and women with sexual knowledge are men and women with power to bring satisfaction and fulfillment to their love partners as well as to themselves. "The Photographic Manual Of Sexual Intercourse" will give you the knowledge and power to master all the wonders and aspects of sex. And remember, it is all available to you NOW! All you have to do is use the enclosed order card!

This book is so fascinating, so [illegible] informative, [illegible] will be the last book on sex that you will ever buy because [illegible] the last books on sex that you are likely to need!

FIRST CLASS
PERMIT No. 2800
BKLYN, N.Y.

BUSINESS REPLY MAIL

NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES

POSTAGE WILL BE PAID BY

PENT-R BOOKS INC.

P.O. Box 1565,
Grand Central Station,
New York, N.Y. 10017

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
PROHIBITORY ORDER

In the Matter of

Pent-R-Books
Mailer

Box 81

Brooklyn, N. Y. 11223
and agents or assigns

PROHIBITORY ORDER

NO. 2216

WHEREAS, we were furnished a mailing piece containing advertising matter which you mailed or caused to be mailed to

R. W. S. Dodge (Mailing label code: K 3)
(Name of Addressee)

122 Plantation Dr. Houston, Texas, 77024
(Address);

and

WHEREAS, said addressee has determined your advertisement to be a pandering advertisement offering for sale erotically arousing or sexually provocative matter; and

WHEREAS, said addressee has requested the issuance of an order pursuant to the provisions of Title 39, U.S. Code, §4009, a copy of which law is printed on the reverse side hereof, directing you and your agents or assigns, to refrain from making any further mailings to him [and his minor children residing with him who have not attained their nineteenth birthday].

NOW, THEREFORE, pursuant to the cited statute, you, your agents and assigns, are hereby ordered:

(1) To refrain from any further mailings to the following parties at the indicated address, or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder, resident, boxholder, postal patron, rural route boxholder, and local, effective on the 30th calendar day after receipt of this order:

R. W. S. Dodge

ADDRESS: 122 Plantation Dr.
(Street)

Houston *(City)* Texas *(State)* 77024 *(ZIP Code)*

(2) To immediately delete the above-named parties from all mailing lists owned or controlled by you or your agents or assigns.

(3) To immediately abstain from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the parties mentioned above.

GRENVILLE M. ELDER, POSTMASTER

BY: NEAL C. MILLER
Postmaster

SUPT., MAILING REQUIREMENTS
City State ZIP Code

HOUSTON, TEX. JUN 26 1969 USPO

[POSTMARK]

Dated June 26, 1969

POD Form 2152
May 1968

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PUBLIC LAW 90-206 **December 16, 1967**

"§4009. Prohibition of pandering advertisements in the mails

"(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postmaster General to refrain from further mailings of such materials to designated addressees thereof.

"(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postmaster General shall issue an order if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

"(c) The order of the Postmaster General shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after receipt of the order. The order of the Postmaster General shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

"(d) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, he shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for his belief and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

"(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punished by the court as contempt thereof.

"(f) Receipt of mail matter thirty days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

"(g) Upon request of any addressee, the order of the Postmaster General shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

"(h) The provisions of subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, United States Code, shall not apply to any provisions of this section.

"(i) For the purposes of this section--

"(1) mail matter, directed to a specific address covered in the order of the Postmaster General, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postmaster General's order; and

"(2) the term 'children' includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.".

(b) The table of contents of chapter 51 of title 39, United States Code, is amended by adding at the end thereof--

"4009. Prohibition of pandering advertisements in the mails."

SEC. 302. The provisions of this title shall become effective on the one hundred and twentieth day after the date of enactment of this Act.

Effective Date: 4-15-68.

1745a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

USE THIS FORM 14

I, B.W.S. Dodge addressee
(print your name)

(parent of addressee) of enclosed

mailing from Pent-R. Books Inc
(print mailer's name)
P.O. Box 81, Brooklyn, N.Y. 1122
(address, city, state, ZIP code)

consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, § 4009, I request that the above-named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailings to me, [as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday].

B.W.S. Dodge June 73
Print your name Date

12-2 Plantation Dr.
Street

Houston, Texas, 77024
City, State, and ZIP Code

LIST CHILDREN AND BIRTHDATES:

_____

_____

_____

_____

PENT-R BOOKS INC.

P. O. BOX 81
BROOKLYN, N. Y. 11223

HOUSTON, TEX.
JUN
26
1969
REC'D

HOUSTON, TEX.
JUN
26
1969
REC'D

BROOKLYN
N. Y.

FIRST CLA
U. S. POST
PAI
6c
Permit #, 9

FIRST CLASS MAIL

R W S DODGE
122 PLANTATION DR
HOUSTON 24 TEXAS ES
77024

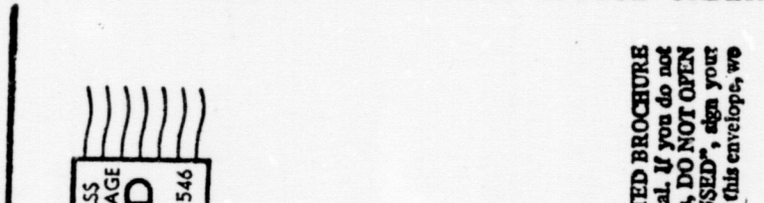
51

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRAT
offering for sale to Adults Only, a new marriage manu
wish this mail or if you are not over the age of 21 years
THIS ENVELOPE! Simply mark this envelope "REFU
initials and return it to your mailman. Upon the return of

PERSONAL

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



DEFENDANT'S NOTICE OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.
----------x

NOTICE OF CROSS MOTION.

Docket No.
72 C 611

The defendant upon the annexed affidavits, cross-moves the Court as follows:

1. To dismiss the action, without prejudice to restoring it to the calendar upon a further showing of a further alleged violation of the law, under the general principles of equity discretion.

2. To grant summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

3. To vacate the purported prohibitory order issued in this case.

DEFENDANT'S NOTICE OF CROSS-MOTION

4. To grant such other, further and different relief as to the Court may seem just and proper in the premises.

SIGNED:

HERBERT MONTE LEVY
Attorney for Defendant
295 Madison Avenue
New York, New York 10017
689-2220

AFFIDAVIT OF HERBERT MONTE LEVY IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant,

----------x

ANSWERING AFFIDAVIT OF HERBERT MONTE LEVY, Esq.

Docket # 72 C 611

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

HERBERT MONTE LEVY, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the attorney for PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment, and in support of our cross-motion for summary judgment. I am personally and fully familiar with all the facts set forth herein.

At the outset, I note that this case is thoroughly moot, and that there is no case or controversy presently pending before this Court; any order entered by this Court enforcing the prohibitory order (hereinafter sometimes PO)

would be a useless order. As shown by the annexed affidavit of RICHARD S. SCHWARTZ, the defendant has taken every precaution humanly possible -- and more so -- using every possible available computer technology, to insure that second mailings are not made to persons in regard to whom PO's have been issued. Indeed, I myself have asked the Justice Department representatives whom I met with on this case on September 25, 1973 in Washington D.C. -- Messrs. Schiffer and Cogbil -- whether they had any suggestions as to how my client might take any better precaution to insure against violations, and they were silent on this score. Nor has the Assistant United States Attorney in charge of this case locally, Lloyd Baker, Esq., ever been able to suggest any additional precautions which my client should take.

Not only has my client taken every precaution to avoid the possibility of a second mailing, but my client's position, as stated in the annexed affidavit of Mr. Schwartz, is that it has no intention whatsoever of violating any PO, that under its existing computer technology it cannot violate the PO even if it wanted to; accordingly, there is not only no threat of violation of a PO, but no possibility of violation of the PO (barring computer error). Certainly,

a computer error could not be the basis for any finding of a contempt, nor could a human error, perhaps by feeding an erroneous entry into the computer, ever be deemed a contempt. Hence, since nothing can be accomplished by any order to be entered, and since there is neither threat nor possibility of an intentional violation of a Court order, there is no ground for equity to issue an injunction. Certainly, in its discretion, no injunction should issue. The case, too, is clearly moot, and we cannot see how there is any case or controversy within the meaning of the United States Constitution, which would give this Court jurisdiction.

Nonetheless, though we note this plea in bar because of lack of jurisdiction, because of lack of case or controversy, mootness, and no threat or intent by the defendant to act illegally, we now turn to other aspects of the matter.

Irrespective of what we have set forth above, and what we set forth below, this case -- along with all the other related cases -- must be dismissed for the failure of the Postmaster General to make the final finding and order that he is required to make before any jurisdiction can attach in this Court. Thus, Subsection D of Section 4009 provides as follows:

> "If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a District Court of the United States for an order directing compliance with such notice."

Thus, the Postmaster General must determine that the order given -- the prohibitory order -- has been or is being violated. Yet neither the order in this case, nor in any of the companion cases, makes any such determination. In fact, no determination whatsoever was made by the Postmaster General. The order itself, a form order, merely recites as follows:

> "Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned prohibitory order."

The mere claim, or fact, that satisfactory evidence was presented that defendant acted in violation of a prohibitory order, does not constitute a determination that defendant had violated or was violating the prohibitory order.

AFFIDAVIT OF HERBERT MONTE LEVY

Satisfactory evidence could be presented to show a violation, and there could be evidence presented contra as well. Thus, there was simply no determination required by statute, but merely a recital that a prima facie case had been made out.This is totally different from a determination having been made of a violation.

Moreover, even had a determination been made, the statute required such a determination to be made by the Postmaster General. The determination here, such as it was, was made by a Superintendent of Mailing Requirements . We are aware of no delegation of authority to a Postmaster to make such a determination, and for such a local official to make a request to the Attorney General of the United States. Yet that is apparently what happened here. Moreover, if there were any such purported delegation pursuant to either regulation or rules, we know of no authorization for such delegation, and therefore, the entire proceeding, predicated upon this order, must fall as being without a foundation.

The so-called Pandering Law, 39 U.S.C. Section 4009, gives complete discretion to the complaining addressee to determine whether the advertisement occasioning the Prohibitory Order (hereinafter sometimes "PO") is indeed a

pandering advertisement. Of course, many complaining addressees, whose libido is aroused by non-sexual materials or who are eager to shut off the mailed flow of advertisements, have certified that an advertisement is a pandering one, when to a more reasonable person it might appear that such an advertisement was not pandering, i.e., neither erotically arousing nor sexually provocative. Thus, according to the Report of the Commission on Obscenity and Pornography (Bantam Books Edition, 1970), at p. 133:

> "Prohibitory orders have been issued against nearly 400 separate business firm names mailing sexually oriented materials; orders were also issued against dozens of business firms advertising nonsexual products."

However, according to information we have received, the Government has not sought even one Court order to enforce a postal prohibitory order against any of the dozens of business firms advertising nonsexual products. It has sought Court orders only when the first mailing was -- in the judgment of the Post Office -- pandering, i.e.,of a sexually provocative or erotically arousing type. Thus, for example, I have received information, and therefore allege, that while prohibitory orders have been obtained against mailings made by such organizations as the American Civil

Liberties Union and the Practicing Law Institute -- neither of which mail any material which could conceivably be called sexually provocative or erotically arousing -- the Post Office and its successor, the Postal Service, have completely failed to go into Court to seek a Court Order enforcing a PO, even when there has been a violation of the PO. We defy the Government to show otherwise.

Thus, the Government has been selectively determining in which cases it should seek a Court order. Since nothing can happen to a mailer unless and until he violates a Court order, it is quite clear that Post Office censorship is now being used in the place and stead of the discretion of the complaining addressee. Thus, the First Amendment is violated, because as construed and applied, and in its operation and effect, the law vests the plaintiff and the Attorney General with the power to make discretionary evaluations of material, and to determine which advertisers to move against, on the basis of the type of material advertised. The underlying statute is repugnant to the First Amendment and deprives defendant of its First Amendment rights, and is further repugnant to the due process clause of the Fifth Amendment, and further deprives

defendant of liberty and property without the due process of law required by the Fifth Amendment, as well as depriving defendant of the equal protection of the laws under the said Fifth Amendment.

The administrative complaint issued by the Post Office did not state any cause of action, in that it failed to allege the date of the alleged second mailing, and in that it further failed to allege that such alleged mailing was made more than 30 days after the defendant's alleged receipt of the alleged PO.

As construed and applied, and in their force and effect, 39 U. S. C. Section 4009 and the Rules and Regulations promulgated thereto and thereunder, are repugnant to the due process of law clause of the Fifth Amendment and to the Sixth Amendment, and deprive defendant of liberty and property without said due process, and of its right under the Sixth Amendment to a trial by one who is impartial, to be informed of the nature and cause of the accusation, to confront and cross-examine the witnesses against it, and to have compulsory process for obtaining witnesses, the defendant not being given the "full hearing" afforded him according to the decision of the Supreme Court of the United States in Rowan v. United States Post Office Department, 397 U.S. 728 (1970), for the following reasons:

AFFIDAVIT OF HERBERT MONTE LEVY

In every Post Office hearing, the hearing officer--an employee of the Post Office which is bringing the complaint--has been the prosecutor, the judge, the jury, and, to the extent to which he has introduced in evidence varying papers, a witness. Wherever the Post Office has purportedly determined that defendant or someone acting in its behalf has violated a PO, such determination has been made without the testimony of any person whatsoever identifying any materials or the dates of their being received or sent, thus without any legal evidence whatsoever. Despite repeated demand made therefor by the defendant here, no complaining addressee has ever been produced at an administrative hearing, nor has any such person's testimony been permitted to be taken by deposition after due and proper requests therefor, the Post Office disregarding its own rules and regulations in regard thereto, and consistently failing to give any information whatsoever on how its own rules and regulations are being implemented. It is our understanding that the Post Office has never even inquired as to the willingness of the complaining addressee to appear and give testimony at a Post Office hearing. Thus, any mere indication by a complaining addressee, or any written (but invariably unsworn) statement by the complaining addressee,as to the date of receipt of the second mailing, has been accepted as

uncontrovertable Gospel truth by the Post Office, with no opportunity being given to the defendant to show error or hostility on the part of the complaining witness.

Insofar as the plaintiff may rely upon the presumption of 39 U. S. C. Section 4009(f), such presumption is arbitrary, capricious, unwarranted and unreasonable, especially in view of the notoriously poor mail service of the last several years.

The defendant has been denied its right to a hearing before the Post Office, and, unbelievable as it may sound, the Post Office has in effect taken a default against my client by reason of its own inefficiency, by reason of its own inability to properly transport the mail to itself. The Pandering Law requires that a demand for a hearing be filed with the Postmaster General within 15 days after the PO has been received by the mailer. The Post Office immediately began violating this provision of the law, by requiring the demand for a hearing to be addressed not to Postmaster General, but to the local Postmaster, or to someone at a local Post Office; this is clear from an examination of the text of the complaint issued by the Post Office. Thus, it was improper for the Post Office to take a default in any situation, since it required a filing with the wrong official.

AFFIDAVIT OF HERBERT MONTE LEVY

Nonetheless, at the time that the administrative complaint was issued in this case, I had followed the following procedure:

The latest stamp on the back of the envelope containing the administrative complaint, I reasoned, was the earliest date upon which the PO was delivered to client; certainly, it was a reasonable date to measure from, since obviously the Post Office could not have put a stamp on the back of the envelope after it had parted with its custody. Accordingly, when received from client, it was my practice to make a notation as to the deadline date for mailing in the demand for hearing, based on the latest Post Office stamp. Where a stamp showing date was put on by my client, I measured from this date of receipt. I calculated this date as being 14 days from the latest date stamped on the back of the envelope, except where the 15th day would fall on a Monday, and I would note my deadline as being the Friday preceeding that Monday. Appropriate adjustments were made if a holiday intervened. I would then make it my business to mail out my demand for a hearing on or prior to that deadline date.

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This was my practice for many many months. The Pandering Law's effective date was April 14, 1968. I had no problems whatsoever with my practice until sometime in 1969 when I noticed that, although I was following my prior plan of action, I was suddenly the recipient of defaults all over the place.

Upon inquiring as to why these defaults were being taken, I was orally advised by Post Officials (just who advised me, I do not now remember) that the Post Office had adopted a new construction of the statute, that they had now decided that they were going to take the words of the statute literally, and if the demand for hearing was not actually "filed" by arrival at the particular Postmaster's office on or before the 15th day, this would be considered a default. I protested that even Internal Revenue Service, when it requires that you file a certain tax return by a certain date, considers you to be on time if your mailing envelope is postmarked on the day set for filing, and that the Post Office was now claiming that it could put me in default by being slow and inefficient in the delivery of mail to itself. My protests were to no avail. Annexed hereto are copies of my correspondence in this regard, which were sent.

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I might also perhaps add that I was extremely careful to always have my demand for hearing sent out on the date that the demand for hearing bore; that demand for a hearing was sent out, though it is not reflected in the "certified" file submitted by the Government, on the day indicated on the demand for hearing, (copy annexed) and there was thus absolutely no reason whatsoever why, in equity or logic, the Post Office took a default solely because of its own inefficiency in delivering mail to itself.

In this connection, I note also that in this very case, I took an appeal from the decision denying a hearing as evidenced by the correspondence annexed hereto. So far as my records now show, that appeal was never acted upon. Thus, this proceeding is being brought to enforce a PO while an appeal is still pending in the Post Office Department.

The above also demonstrates that the file submitted by the Government herein is woefully incomplete.

Though the notice of motion recites that it is proceeding upon an annexed certified copy of the record of the proceedings in the Post Office Department,

there is absolutely no copy of any certification whatsoever annexed to the papers that have been served upon defendant. Since no affidavit of any sort has been submitted with the Government's moving papers, there is thus simply no factual basis whatsoever upon which this Court can imply or find any fact whatsoever upon which to base the injunction that the Government seeks. Accordingly, this proceeding must be dismissed. However, on the bare possibility that there is a certification in existence and that an inadvertent clerical error resulted in no copy of the certification being served with the motion papers (though this is unlikely, in view of the fact that amongst the numerous cases in which summary judgment papers were served upon defendant, there is frequently an absence of such certification), we nonetheless go on to note the following, in regard to the merits of the Government's application.

The Pandering Law, as it existed at the time of the alleged violation complained of here, did not require merely that a prohibitory order be issued as an order of the Post Office, or its present successor the Postal Service, but required that the prohibitory order be issued by the Postmaster General. In the case at bar, the prohibitory order was not issued by the Postmaster General.

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In the case at bar, the prohibitory order was not issued by the Postmaster General. It was not even issued by a local postmaster. It was issued, on the contrary, by the Superintendant of Mailing Requirements. We are not aware of any delegation to such an officer of the power to issue a prohibitory order, and if there was any such delegation of authority, pursuant to any rule or regulation, we are aware of no statute which would authorize such delegation to the Superintendant of Mailing Requirements.

The prohibitory order prohibited a mailing to (possibly among others) a person by the name of B.W.S. Dodge . However, the second alleged mailing was not to such person, but was addressed to a different name, to wit, B. Dodge , a person not named in the prohibitory order as one to whom a mailing was prohibited. Thus, there was clearly no violation of the prohibitory order.

The prohibitory order prohibited a mailing to a street address of 122 Plantation Dr. . However, the second alleged mailing was to a totally different street address, to wit, 122 Plantation Rd. . Thus, there was clearly no violation of the prohibitory order.

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We turn next to the problem of whether, even assuming that the record is properly certified and that the so called evidence of date of receipt of the second mailing was admissible, -- both assumptions being purely for purposes of argument, -- a violation of the prohibitory order has been made out. We note, at the outset of this facet of the argument, that there is completely lacking any proof whatsoever of the date of the second mailing, that such date was never alleged, and that therefore the defendant was never accorded due process of law under the Fifth Amendment and the right to know the nature and cause of the accusation against it under the Sixth Amendment. Just as significant, however, is the fact that the second mailing bears no postmark whatsoever. Thus, the Government is forced to rely upon the statutory presumption found in Section 4009 (f), that a mailing received more than 30 days after the effective date of prohibitory order is presumed to have been sent in violation of the order. But, as we show in our brief, the effective date of the order is 30 days after it has been received, so that there is no presumption of a violation unless the second alleged mailing was allegedly received 60 days or

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We come next to the question of admissibility of the evidence of the alleged date of receipt of the second alleged mailing. In view of the improper certification of the record, we do not see how such proof can be admissible in any event; it is completely unsworn to, and it is the rankest kind of hearsay. The Government, in its brief, has not attempted to sustain the admissibility of this evidence. We expect, however, that the Government will urge that, assuming proper certification, it is admissible under the Federal Business Records Act (28 U. S. C. Section 1732 (a)) as a record kept in the ordinary course of business, it being the ordinary course of business to keep such records. However, as we show in our brief, since the business involved is that of the Post Office, and the entries as to alleged dates of receipt were made by third persons, not by the Post Office, such rule does not apply. Moreover, even if such a rule did apply, in a normal case, it would not be applicable here, for this reason:

The normal reason for permitting evidence of business records to be admitted is that such records are inherently reliable. But in a prohibitory order-pandering case, we submit, such evidence is inherently unreliable. For several reasons, as follows:

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a) The type of person who goes to the time and trouble of going to the Post Office to obtain a prohibitory order rather than merely tear up the material which offends him, especially when -- as here -- he has been given notice of the contents of the envelope (see the right hand bottom of the mailing envelope), is obviously the type of person who is sorely offended by sexually oriented material, the type of person, indeed, who very well might, usually does, wish to see as much trouble caused to the mailer of such material as possible, even when, as here, the material involved has been held to be not obscene. This is graphically illustrated, despite all the hypocrisy of the Pandering Law, in the statement of one addressee, in the case purportedly pending in this Court of United States v. Pent-R Books,72 C 606, where the addressee noted as follows on the notice (request) for prohibitory order:

> "I request more than this (see below). This form evades the real issue. I have no minor children in my home, but YOU know this literature is reaching homes that have minor children. I AM NOT CONTENT WITH MERELY STOPPING THIS TYPE OF PORNOGRAPHIC MAIL FROM REACHING MY HOME; I EXPECT THE POST OFFICE AND JUSTICE DEPTS. TO FLUSH OUT THE SOURCE OF THIS OBSCENE MAIL, GET HIM OR THEM IN PRISON, AND STOP ANY OF THIS STUFF FROM BEING MAILED OUT AT ALL."

Similarly, in another purportedly pending case, in the memorandum from the Post Office Dept. dated June 3, 1969, the Postmaster recites that the complaining addressee, Mr. Griffis,

> "...is very concerned about this type of literature in the mails and offers his assistance and cooperation in trying to rid the mails of it."

And this is very obviously the attitude of the Post Office.

b) There may be community pressure, pressure by Post Office officials, or even by the local Postmaster or postman to attempt to make out a violation of a prohibitory order in order to cause more trouble for the mailer, in this emotionally-charged situation. The defendant is precluded from obtaining an examination of the complaining addressee in order to determine this, and there is simply no way in which the defendant can ever obtain such information. But this has happened. Graphic and dramatic proof of this -- of a direct Post Office attempt to influence an addressee to set forth a false date of receipt of mail so as to be able to find a violation of a prohibitory order, -- was accidentally uncovered during a hearing in another case involving this very defendant.

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Thus in the Post Office case entitled "In the Matter of: Violation of Prohibitory Order No. 633, issued against Pent-R Books, Inc., Respondent, on behalf of Thelma M. Moser, Complaining Addressee, by Postmaster, Phoenix, Arizona," Post Office Docket # R14-Pa64-633, Gary Langer, Esq., then of my office, at the Post Office hearing, asked to look at the original folder. Upon it being examined, Mr. Langer noted that in the file, there was a card, obviously prepared by the Post Office, the bottom of which purported to show the date of receipt reading:

> "On August 27, 1969, I, Thelma Moser, received from the Pent R Book (sic) a second letter",

apparently signed by Thelma Moser. But immediately preceding this legend, also obviously prepared by the Post Office - which had failed, however, to cut it off -- appeared the following:

> "In order to make a case against this firm we must have signed statement as to date of delivery of the second letter. The date given is an estimated date, but will give us the correct waiting period to carry on this complaint. An envelope is supplied for your convenience and no postage is necessary."

A Xerox copy of the card is being filed with this Court in United States v. Pent-R Books, Inc., 69 C 1362.

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That this came from the Post Office is quite clear -- no one else would or could have given this "information" and supplied a postage-free envelope. The Post Office's clear motive was "to make a case against this firm (defendant)", and the date given was an estimated date, obviously "estimated" by the Post Office in order to give them "the correct waiting period to carry on this complaint." Thus, the alleged date of receipt of the second mailing in that case was a totally fictitious date that the Post Office itself "estimated" in order to show a violation. (How could the Post Office make an estimation of that which was not within its own knowledge?) It will be noted that the alleged date of receipt, August 27, 1969, was completely typed in on the same typewriter which had written the instructions, and was obviously not done by Thelma Moser. Filed in 69 C 1362 will be a photocopy of the transcript of the stenographic minutes of the Post Office hearing on this matter.

In the complete absence of any opportunity to cross examine Thelma Moser, or the Postal Officials involved -- an opportunity constantly requested by us, but always denied in each and every case, -- the defendant is simply at the mercy of the Post Office, when the Post Office thus unilaterally

decrees the alleged date of receipt of the second mailing, to get a correct waiting period to carry on its complaint. The Post Office obviously picks a date convenient to show, in their legal judgment, a violation. How widespread this practice has been by the Post Office, it is impossible to determine. (We should also note that the Post Office has consistently taken the position that receipt of a second mailing more than 30 days after receipt of the prohibitory order presumptively establishes a violation; though this position is incorrect, it explains why the Post Office does not always suggest a date of receipt of the second mailing more than 60 days later.)

Of course, this shows that when the Government seeks equity here, it does not come into Court with clean hands. Its hands are despicably defiled by its covert attempt to frame the defendant in the Moser case, an attempt disclosed only through its carelessness in not cutting off the top of the card in this instance. While this is not one of the cases presently pending in which summary judgment is sought, the simple fact is that there is no investigatory tool whatsoever by which we can ascertain how widespread this practice is and was. Denied the right to confront and

AFFIDAVIT OF HERBERT MONTE LEVY

examine a complaining addressee, which we contend is a denial of liberty and property under the due process clause of the Fifth Amendment and the denial of the right to cross examine and confront defendant's accusers under the Sixth Amendment, but with the proof of at least one attempted frame-up, we submit that the Government must either submit all of its complaining addressees and Postal Officials to confrontation and cross examination, or that equitable relief should be denied by the Court.

In my affidavit, I note that the Post Office hearing examiner sits as the witness, judge, and jury. An examination of the transcript of the minutes in the Moser case shows the vice of such multiple roles being combined in one person. The hearing officer was David S. Kelson, Esq., an attorney for whom I have the greatest respect and admiration. Yet even Mr. Kelson, when faced with indubitable proof of the Post Office framing a defendant, rose to the defense of his employer, the Post Office. It is, under the circumstances, a severe denial of due process to permit the same person to be witness, judge and jury, especially when he is employed, as here, by the same Department which makes the accusation of violation.

Thus, whatever exception there might be based upon inherent reliability of business entry records is totally lacking in this case. In this day of revelation after revelation of improper conduct on the part of highest Government officials, and with at least one Postmaster having been found out to attempt to obtain false statements as to date of receipts of second mailings, it would simply ludicrous to hold that there was any inherent reliability in the alleged statement by an addressee of the date of receipt of the second mailing.

The handwriting appearing on the second alleged mailing envelope does not appear to be the same handwriting in which the complaining addressee made his original request for a prohibitory order. It is quite different.

The alleged receipt purporting to show the date of receipt, purportedly signed by the complaining addressee, does not clearly show the date it was received. It merely recites "received," or a word or words to such effect. The next line sets forth the name of the addressee. This may well show the date the Post Office received the material from the complaining addressee, rather

than the date that the complaining addressee received the second mailing from the defendant. It certainly is not proof that this was the date of receipt by the complaining addressee of the defendant's second alleged mailing.

The writings purporting to indicate receipt by the signatory contain what are apparently two different handwritings, one handwriting showing the alleged date of receipt, and one showing the signature underneath. Since these are in apparently two different handwritings, it is impossible to tell whether or not the date of receipt was perhaps inserted by the Post Office, rather than by the addressee himself. It may be that a trial would disclose this, with an opportunity to examine the complaining addressee, and hence summary judgment should be denied to the Government.

The proof of date of receipt of the second alleged mailing merely purports to show the date upon which it was received -- but in no way, shape or form does it set forth by whom it was received on such date. It could mean received by the Post Office,

it could mean received by anyone, and there is simply no signature to even vouch for such a date of receipt -- even by the Post Office.

The signature purporting to show the receipt of the second mailing is palpably different from that which appears elsewhere in the same file. There is no proof whatsoever, and the Government's motion should be denied.

While the law as quoted in the Government brief now permits a complaint to be issued by the Postal Service, it is nonetheless true that the statute as it existed at the time of the issuance of the complaint in the case at bar required that the complaint be issued by the Postmaster General. So, too, with the order determining the violation. But in the case at bar, the Postmaster General did not issue the administrative order finding the violation, or any administrative order.

On the contrary, the complaint and order were not even issued by a local Postmaster, but by a Superintendent of Mailing Requirements.

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There has been neither showing nor claim that there was any statutory authority -- palpably lacking -- for the delegation by the Postmaster General to such person, an authority which would seem to be singularly lacking, in view of the fact that recommendation has been made to the Attorney General to seek a Court order upon the say-so not of the Postmaster General, a Cabinet officer, but on the say-so of a minor functionary. If there be such a delegation of authority, we are unaware of it, and further unaware of any statutory or other basis for such delegation.

This affidavit has been particularly directed towards the particular facts in this case. We also submit herewith an affidavit by Richard S. Schwartz, which will be filed in every one of the presently pending Pent-R cases, which attacks the proposed relief requested by the Government on numerous other grounds, common to all of the cases pending in this Court, against this defendant.

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For the reasons stated in this affidavit, as well as for the reasons set forth in Mr. Schwartz' more generic affidavit, we submit that the Government's motion for summary judgment should be in all respects denied, and that our cross motion for summary judgment should be in all respects granted.

Sworn to before me this
6th day of November, 1973

HERBERT MONTE LEVY

GILSOM SAFDEYE
Notary Public, State of New York
No. 3425478
Qualified in Kings County
Commission Expires March 30, 1975

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY.

Burl C. Miller
Houston, Texas 77002

Pent-R Books, Inc. [illegible]l, 1969
Dodge)
R-11, H-65

October 15, 1969

(Form demand for hearing)

Pent-R Books, Inc.

Norris R-11, H-40

3. Thecontents of neither mailing are annexed to the complaint. Thus, the rules and regulations have been violated, it is impossible to determine whether the Prohibitory Order was violated, the complaint fails to state a cause of action, and client has been deprived of its constitutional rights enumerated in Paragraph 2. above.

4. The Prohibitory Order prohibited a mailing to the address of 122 Plantation Dr., whereas the second mailing envelope was addressed to 122 Plantation Rd. Thus, the Prohibitory Order was clearly not violated.

HERBERT MONTE LEVY

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

LAW OFFICES
OF
HERBERT MONTE LEVY
295 MADISON AVENUE
NEW YORK, N. Y. 10017
(212) 689-2220

November 6, 1969

William Lawrence, Esq.,
Assistant General Counsel
Mailability Division
Post Office Department
Washington, D.C.

Dear Mr. Lawrence:

Re: Post Office Docket Nos. R-11, H-64; R-11, H-65; R-11-FWT-86; R-11-FWT-87; R-11-FWT-85; R-11-FWT-81; and R 11 NO-39.

Again, I must appeal to you from hearing denials and/or orders in each of the above entitled matters. Please consider this as a notice of appeal and permit me to incorporate by reference all points previously made in prior correspondence in regard to similar matters as well as the following points below:

In regard to Sample, I note that client received complaint on October 20, that hearing demand was sent October 31, and that a hearing denial was made on November 3 -- only 14 days after the date of receipt of complaint. This, of course, is entirely illegal.

As to Dodge, the same dates exactly apply.

As to Kuehner, Baird, and Wheeler, each of the complaints in these matters was received by client on October 20 and orders were entered on each of these matters on November 3, 1969, again only 14 days from the date of receipt. In each of these, I, myself had prepared and mailed out a demand for hearing on November 3, in my secretary's absence due to illness, and had sent each of these air mail, so that they were mailed air mail on the 14th day after date of receipt, and were it not for the slowness of the post office, should have been received by November 4, the last day for filing. In regard to the last two matters:

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

I am unsure whether I am appealing on the same ground, since a thorough search of our records reveals no reciept of any complaint in either of these matters. Therefore, I do not know whether these are cases in which there really was an inadvertent default, or whether we did make a demand for hearing, and an order was entered because of delays in the mails. I am sending copies of this letter to all the Postmasters involved, and I should greatly appreciate it if you and the Postmasters involved in the last two matters could advise me as to whether they ever did receive a demand for hearing. If they did not receive such a demand, we ask that the inadvertent default be opened; if it is denied, we claim that this would be a denial of due process, as would the absence of any rule or regulation permitting the opening of an inadvertent default.

I should perhaps add that I was on trial during the week ending Oct. 31, 1969, defending in a federal conspiracy case, through Wednesday of that week, and that on Thursday of that week I had to prepare an application for a stay to Mr. Justice Harlan of the U.S. Supreme Court, the application for the stay being Friday, October 31, 1969, on which day I went to Washington to do so. Under these added circumstances, as in the ordinary circumstances, any default would certainly be excusable.

I also note that I found on my desk, upon my return from Court, a file with a type of label I do not use, marked "FREDERICK, Robert MIN-1258 (Prohib O #55-8168)", which seems to emanate from Minneapolis, with other papers which seem to emanate from your office. I do not krow whether this belongs to your office, and was inadvertently sent to me by your office or by Minneapolis. In any event, I am sending it on to you -- and I, at any rate, shall excuse your default!!!

Sincerely,

Herbert Monte Levy

HML/mol

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

November 11, 1969

William Lawrence, Esq.,
Assistant General Counsel
Availability Division
Post Office Department
Washington, D.C

Re: Post Office Docket Nos: R 11-BO-69;
PE-69-7121-122; PE-69-7008-123;
PE-69-7237-124; R-11-PHT-68; R-11-PHT-69;
R14-PA-74; R14-PA71-603; R-11, E-64;
R-11, E-69;

I appeal to you, in each of these cases, from the Orders in the above matters. Please consider this as notice of appeal, and as incorporating by reference arguments previously made in correspondence in regard to such matters.

In the first four matters, I note that my Demand for Hearing was served by mail, by me personally, on November 3, 1969, and therefore should be considered as having been filed on November 4, 1969. In the first matter, the answer was sent air-mail by me on November 3rd.

In the fifth and sixth matters above, the form Demands were sent air-mail November 4, 1969, again by me personally.

In each of the cases referred to above, the date the material was sent by me was the day before the filing deadline, and the Orders were apparently entered on the filing deadline.

In the next two matters, form Demands were sent by me air-mail on November 4, 1969, as to Complaints which had been received on October 21, 1969. The last day for filing was November 5, 1969 in both cases. Nonetheless, Phoenix entered an Order on November 3, 1969, one day before the last day for the Demand to have been filed.

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

The last two matters invol e Orders entered after the hearing denial: I had already appealed to you from the hearing denial on both these matters in my letter to you of November 6, 1949.

With kindest personal regards, I am,

Sincerely,

Herbert Monte Levy

HML/kol

P.S. I am sending copies of this letter to each of the Postmasters involved.

AFFIDAVIT OF RICHARD S. SCHWARTZ IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.

Defendant.
----------x

ANSWERING AFFIDAVIT OF RICHARD S. SCHWARTZ.

Docket #

72 C 611

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

RICHARD S. SCHWARTZ, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the Secretary of defendant PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. as well as of RAS ENTERPRISES, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment herein, and in support of defendant's cross-motion for summary judgment. I am fully and personally familiar with all the facts set forth herein.

AFFIDAVIT OF RICHARD S. SCHWARTZ

EXTRAORDINARY PRECAUTIONS TAKEN BY DEFENDANT TO AVOID OFFENDING RECIPIENTS OF ITS MAIL.

Upon the outside of all mailing envelopes sent by defendant, or upon the outside of an inner sealed envelope, there had always appeared a notice advising the recipient of the nature and content of the advertisement contained therein.* If the recipient did not want this material, he merely marked the envelope "Refused", as invited to by defendant, initialed it, and returned it to the postman or dropped it into a mail box which he was sure to pass sometime during the day, all at defendant's expense, after which defendant removed the addressee's name from its mailing list.

Defendant had thus avoided the necessity of an addressee viewing materials which he preferred not to be exposed to, unlike the requirements of the Pandering Law where, if the complaining addressee is to be at all honest, he must open and view the materials. We had also avoided the time

* This practice ceased in 1970, when the Goldwater Amendment to the Postal Reorganization Act of 1970 required the legend "Sexually Oriented Ad" to appear on the envelope or on an inner sealed envelope. Defendant then followed that law. See Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp.297 (E.D. N.Y. 1971).

consuming necessities inherent in the addressee obtaining the Prohibitory Order and following through for a complaint. We emphasize that defendant had always done this -- starting long before the effective date of the Pandering Law.

Defendant has thus always been extremely careful of the sensibilities of persons who might otherwise be offended. Incidentally, lest the Court think that the more than 200,000 prohibitory orders that have been received by the defendant seem excessive, we note that defendant has mailed perhaps more than 10,000,000 advertising pieces, and thus the percentage of prohibitory orders received by it from all its mailings is some 2%. And though some 200,000 people purportedly objected to our ads, more than 450,000 copies of the book advertised have been sold. We further note that the advertisements, involved herein, for"The Photographic Manual of Sexual Intercourse", have been ruled non-obscene and constitutionally protected by Judge Masterson of the U. S. District Court for the Eastern District of Pennsylvania, United States v. Stewart, unreported, Crim. No. 69-162,

AFFIDAVIT OF RICHARD S. SCHWARTZ

Order dated October 13, 1971. Under these circumstances, we note that if 39 U.S.C. §4009 or its successor be applied to the defendant, who is shown here to be engaged solely in publishing, selling and distributing materials protected by the First Amendment, with a warning notice described above, such application is unreasonable, arbitrary and capricious, repugnant to the due process of law clause of the Fifth Amendment and to the First Amendment, and deprives defendant of liberty and property without due process of law and constitutes an unreasonable, capricious and arbitrary restraint on First Amendment rights, especially in view of the severe limitations on First Amendment rights necessarily encompassed in any attempt to avoid a conflict with 39 U.S.C. §4009 -- as we shall show below. For the price of compliance with §4009, as we note below, is that many mailings cannot be made to persons who wish to receive such mailings, and therefore the statute prevents mailings to persons who desire to receive them, thus interfering with their -- and defendant's -- First Amendment rights -- a possibility never considered by

the Supreme Court of the United States in Rowan, a case which was instituted in the early days of the Pandering Law, without any opportunity whatsoever for the Supreme Court of the United States to have any but the sketchiest information on how the law worked out in practice.

SINCE THE DEFENDANT HAS NEVER WILLFULLY VIOLATED A PROHIBITORY ORDER, AND SINCE THE DEFENDANT HAS TAKEN ALL POSSIBLE PRECAUTIONS TO AVOID SECOND MAILINGS, INCLUDING DEPRIVING PERSONS WHO WISH TO RECEIVE ITS ADVERTISEMENTS OF THE RIGHT TO DO SO, AND SINCE DEFENDANT NOT ONLY DOES NOT THREATEN TO MAKE AN ADDITIONAL MAILING BUT HAS MADE IT VIRTUALLY HUMANLY IMPOSSIBLE TO DO SO, AN ORDER SHOULD NOT ISSUE ENFORCING THE PROHIBITORY ORDER.

The so-called Pandering Law went into effect on April 14, 1968. At that time, no one knew for certain what its operation and effect would be. But after more than 5 years of experience with this law, the defendant knows, and shall hereinafter demonstrate to this Court, that this law cannot be complied with except by disregard of defendant's own First Amendment rights -- which defendant has had to

disregard in order not to be in conflict with the law. We thus claim that the law, so construed and applied, in its operation and effect, does violate the First Amendment.

At no point whatsoever did defendant ever willfully make a second mailing in violation of a prohibitory order; at the present time, and for at least the last three years, because of the computerization that the defendant has used, we submit that not only does defendant have no intent of violating the prohibitory order here, but it could not do so even if it wished. It is our contention that in the complete absence of any willfulness in the second alleged mailing, plus the fact that there cannot be a willful mailing hereafter, an order of this Court should not issue.

As we shall show in some detail at length below, there is no doubt of defendant's good faith and diligence in attempting to comply with the Pandering Law. The cases involved here all deal with second alleged mailings in 1969, in which year Pent-R made about 10,000,000 mailings. But long prior to the 1968 effective date of the Pandering Law, we had

set up a computerized system, solely in order to be able to completely comply with the terms of the law. That system was set up by the President of defendant, Ronald A. Stewart, with my assistance, through arrangements made with a computer house and a system was devised as shall be set forth below. The cost of running that computer operation in the year 1969 was some $62,068. We are advised by the computer house, that it now estimates that it used the services of the equivalent of 25 people working full time for 6 months -- which it computes as the equivalent of one person working 3000 days, or 24,000 man hours -- in order to set up and process the system. As we note at length below, difficulties were encountered because of the use of rented lists, and rented lists were finally abandoned unless they were on computer tape, where the computer could prevent second mailings. The computer operation became more and more refined as we had more experience with it. The use of duplicate mailing labels was eliminated in 1970, when it was found

that this resulted in violations of prohibitory orders. The system itself was finally programmed in 1971, and is still carefully programmed, to guard against second mailiings to such an extent that the computer eliminates even mailings that have not been prohibited. Thus, as we learned of mistakes which took place, we corrected them at once, and took vigorous steps to prevent recurrence of these mistakes or further mistakes in the future. The new system of control greatly improved the situation. It is and has been as nearly perfect as a system can be.

Even originally, as we first set up the computer programming, we had a great rate of success with it. Thus, although we received something more than 200,000 prohibitory orders, the complaints of violation which have so far been upheld by the Post Office -- which bends over backwards to be fair to itself, -- number only approximately 500. Thus, even giving the Post Office the benefit of every doubt, even now the Government charges that only some one quarter of one percent (0.025%) of the prohibitory orders issued to Pent-R

were violated. Moreover, every time we have received a complaint from the Post Office, we have once more fed the name and address of the complaining addressee into the computer, so that no further mailings would be made to such complaining addressees. We have fed these names and addresses into the computer for a third time upon receipt of a Complaint filed in this Court.

Even if an injunction were issued in this case, it would and could have no effect by way of insuring better compliance in the future. With all the efforts we have made, it would be unjust to us to do so, in view of our good faith, and not in the public interest.

Actually, our success ratio is even better than the figure of 1/4 of 1% violations -- or 99 3/4% compliance. Thus, we note the following: All mailings for defendant were handled by another corporation, RAS Enterprises, Inc., of which Mr. Stewart is again the President and I am again the Secretary, as here. The mailings made by RAS Enterprises, Inc. are almost all of a nature that some would undoubtedly find erotically arousing or sexually provocative, so that the mailings of

virtually every other corporation which had been processed by RAS have resulted in prohibitory orders. However, though we estimate that Pent-R, plus all the other corporations serviced by RAS (including RAS itself) have probably had approximately 248,500 prohibitory orders issued against them, there were only seven administrative complaints of violation issued in the first half of 1972, none in the second half of 1972, nor in the first 6 months of 1973. Since then, there have only been three administrative complaints, all issued against an affiliated division of RAS, Companion Products; no material whatsoever was furnished in regard to one of the complaints, so we are at a loss to know whether or not it was justified; in the two cases where some materials were annexed to the complaint, it is perfectly clear that the prohibitory order was not violated. Thus, though there are approximately some 248,500 prohibitory orders issued and outstanding against all such corporations, there have been only some 10 administrative complaints of violation between January 1, 1972 and date -- an alleged violation

rate of less than 0.004%*. Our computer house has estimated the expected rate of computer error to be 1/2 of 1%, so that it is plain that, by falling below this rate of error, defendand (and its computer house) have done a superlative job. There is simply nothing else that we can do, of which we are aware, to avoid offending against the statute. Our good faith effort to comply with the law is perfectly clear. I now detail the course of our computer campaign.

Of course, before the Pandering Law became effective in 1968, defendant had tooled up in order to be able to comply with it. It immediately, upon receiving its first prohibitory order, began to comply with the law, in the following way.

After a prohibitory order was obtained in the Post Office, it was opened by defendant, and dated with the date of receipt (subject, of course, to error -- a lot of them in the beginning, where we failed to put on the date of receipt).

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* This rate assumes that all ten administrative complaints were valid. Since we know that at least two of them were invalid, we have at most eight valid complaints,(only one of which was received after July 1, 1972); assuming the eight are all valid, the violation rate since January 1, 1972 is cut from 0.004% to 0.003%.

AFFIDAVIT OF RICHARD S. SCHWARTZ

A photocopy of each prohibitory order was made, which was sent to the computer house, or "Listing House", while defendant retained the original for its files. At the computer house, the names and addresses of persons to whom mailings should not be made, as they appeared in the ordering part of the prohibitory orders, were typed. These were then read by a device known as an optical scanner, whose function it is to translate the written material into electrical impulses which are put, and then stored upon, a magnetic tape, in a symbolic form. The Pent-R mailing list was put up on a tape itself. When a name appearing on a prohibitory order also appeared on a tape for the Pent-R mailing list, the matching of the two tapes would prevent that person's name from being printed out by the computer on the mailing list which the computer prints out. At the same time, these were sorted out by zip codes.

Two problems became apparent. The first problem was with rented lists. The mailing lists, owned by, sold to and rented to defendant were and are lists of names and addresses of intellectual, mature adults who had previously received

from others, similarly situated to the defendant, advertising or other materials similar to those disseminated by defendant. They were and are mailing lists of names of persons such as doctors, dentists, attorneys, accountants, druggists and other professional people, and owners or proprietors of various businesses thus assuring as much as possible that none of the addressees were or are minors. Because of their nature, many of such mailing lists owned by defendant, and those rented or purchased from others by defendant and others, overlap, and the names of the same persons frequently appear on both such lists.

In view of the many prohibitory orders received by the defendant, it was physically impossible to visually compare, by human vision, the names of addressees thereon with the names in any lists rented by the defendant, especially since the names on rented lists were usually listed in random rather than in alphabetical order. Since the use of an optical scanner and computer to eliminate names on a list involves the copying of the names (by their translation into symbols

stored on the magnetic tape), and since the owner of the rented list will not permit that list to be copied, the defendant found that it was impossible, simply impossible, for it -- or others -- to comply with a prohibitory order insofar as the use of a rented list is concerned.

Moreover, many mailing lists were not available for purchase, being available for rental only, no matter what the price. When a list is sold, the price is many times the rental charges. The operation and the effect of the statute has been that, after defendant learned that it could not comply with the law and also use a rented mailing list, the defendant was forced to abandon the use of most rental mailing lists. It could only use a rented mailing list if and when the owner of such list had himself put the list on magnetic tape, so that the computer could be used to check off the names of persons as to whom prohibitory orders were issued and outstanding. Thus, the defendant has been forced into the position where it can mail to persons on mailing lists, which are available for rental, only if and when such lists are on tape. The defendant has followed this practice since 1970.

Defendant estimates that, because of this limitation, it and the corporation which processes its mailings, and which now owns its mailing lists -- RAS ENTERPRISES, INC. -- have been deprived of the right to mail to somewheres between 5,000,000 and 10,000,000 persons. Even allowing for a 20% of overlap of names on mailing lists already used with those on such rented mailing lists, the operation and effect of the statute has been to prevent mailings for First Amendment materials to approximately 8,000,000 persons within the United States within the last three years.

Further, in this connection, we note that on occasion, the rented mailing lists would not be delivered to the defendant or its computer house, but the owner thereof would insist upon having names and addresses on such list printed or typed by itself or others and sent to separately owned letter shops or mailers where the material to be mailed is inserted in the envelopes, or is otherwise packaged, and mailed. We have included in our estimate above such mailing lists which also are obviously unavailable to the defendant, because of its effort to comply with the Pandering Law.

AFFIDAVIT OF RICHARD S. SCHWARTZ

We submit that the Pandering Law was not intended to apply to a second mailing made to a name on a list rented by the sender. If it was intended to so apply, then defendant, who had exercised the greatest care, would be deprived of liberty and property without the due process required by the Fifth Amendment, since the only way to avoid second mailings to a name on a rented list is by so limiting the use of rented lists as set forth above, and thus effectively restricting the freedom of speech and press of the defendant herein.

There was a second problem which became apparent. In order to print out an entire protester-free list, the list would have had to be printed out anew at least once every 30 days. This particular aspect of the matter itself would have cost at least a minimum of $18,000 per year. To circumvent this cost, three carbon copies of each print-out were acquired at the comparatively nominal costs of $2.00 per 1,000 names. If the mailing label on the second alleged mailing is identical to that on the first alleged mailing, this occurred

because the mailing was made due to the second mailing having been made before a new protester-free list could be printed out, it being impossible and illogical to coordinate dates of mailing with the effective dates of prohibitory orders.

Accordingly, in order to comply with this unconstitutional provision of the law, the use of carbon copies of mailing labels was abandoned by defendant in 1970.* Thus, the law unreasonably and substantially illegally prohibited the use of the mails for First Amendment purposes.

A third problem which was run into was that the optical scanner cannot exercise any judgment. Thus, if the name appearing on the prohibitory order was R. A. Jones, but the mailing list contained the name of Richard A. Jones, the computer would simply not recognize the name.

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*Such use has recently been resumed, but only to the limited extent that carbon copies are made of names and addresses only of those who have bought from us, as to whom the Pandering Law does not apply, Cf. Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp. 297 (E.D.N.Y. 1971). And in any event we have finally worked out a method for their use anyhow, so as to still comply with prohibitory orders.

To avoid this problem, and similar problems, the only way to prevent second mailings was to so program the computer that all persons with the same last name at the same address should not get mail. This was done in 1970.

Of course, the slightest variation of an address would have rendered this an illusory protection; thus, if our attorney's wife Marilyn W. Levy, Esq., who at about that time had an address of 1133 Sixth Avenue, had appeared on a different mailing label as having an address of 1133 Avenue of the Americas, New York City -- the same actual address, but different to a computer -- a mailing to her could not have been prevented.

In the meanwhile, the Supreme Court of the United States had upheld the constitutionality of the Pandering Law though, as we noted, without any knowledge of the operation and effect of the law. The defendant, even though it had pioneered the way in presenting a method by which an unwilling recipient could get its name removed from its mailing list without any expense and minimal effort, had to even further circusmcribe its own First Amendment rights in order to even better comply with the law.

To even better comply with the law, an improvement was made on or about November 14, 1970. Under this new system, the computer sought out the first five letters of the last name of the addressee, and automatically removed from the mailing list the name of any person at the same address who has the same first five letters in his last name -- even if such other persons had requested mailings from the sender, and even if their first names were different and were in fact different people. Thus, if one Murray Schwartz at 295 Madison Avenue, New York City, had obtained a prohibitory order, the computer would have automatically prevented mailings to all persons at that address the first five letter of whose last name are SCHWA. Thus, in order to comply with the law, mailings to Irving H. Schwartz and Herman Schwartzman as well as to Schwartz, Schindler & Levy, all existing persons or firms at that address, would have been prevented.

Thereafter a still further improvement was made, effective in the Spring of 1971. This eliminated from the RAS mailing lists the names of all persons as to whom the

following three factors also appeared in the Government list supplied under the Goldwater Amendment or in the names supplied by the Prohibitory Order:

A. The first five letters of the last name coincide.

B. The first three digits of the street address coincide, and

C. The zip codes coincide.

Thus, in addition to weeding out the names and addresses of the persons mentioned above, all persons within the zip code area (10017) whose last names began with SCHWA at any address in that zip code area which began with 295, would be eliminated from the RAS list. Thus, any Schwartz, Schwartzman, Schwartzberg, Schwarz, etc. at 295 East 42nd or 295 East 41st, etc., etc., would not receive mail, even though some of such persons might be customers.* The problem is also

* Our computer house has advised us that at Co-Op City, a gigantic housing development in New York City which our computer house programmed, there were last names duplicated in 35-40% of the cases. We note that should a Schwartz in Co-Op City obtain a prohibitory order, many hundred (possibly several hundred) other Schwartz's in Co-Op City could not get a mailing from us -- and that this would continue perpetually even after the one objecting Schwartz moved out.

solved of preventing a mailing to say,1133 Avenue of the Americas, when the address we were given was 1133 Sixth Avenue, since the numbers of the street address control. We have thus succeeded in avoiding the type of problem set forth in the annexed page from "Popular Photography."

Of course, there is still opportunity for error. A mistake may be made by the typist who types up the material for the optical scanner, in putting down the name and/or address; a mere speck of dust on a computer tape may prevent the elimination of one or many names. It is estimated that there will be a computer error factor of one half of one percent (0.5%) which cannot be eliminated. (The Government, indeed, has made many errors in the tapes it supplied RAS under the Goldwater Amendment).

I should perhaps also add that when we receive a complaint of a violation of a prohibitory order, we once again feed the name and address of the addressee into the computer, even though in almost all probability it is already on our tapes, and though the second mailing was due to matters beyond our control (e.g., the second mailing was to a new address when the Postal Service had only ordered cessation of mailing to an old address).

AFFIDAVIT OF RICHARD S. SCHWARTZ

That our program seems to be working is evident from the fact that in November, 1971, only four complaints were issued -- one of which seems to be explainable only by computer error, two of which were caused by Post Office error, and one of which cannot be explained because we have not been furnished with sufficient documentation, according to advice from Herbert Monte Levy, Esq., our attorney. In October, 1971, only one complaint was received. So, too in September, 1971.

Thus, all of the corporations having their mail processed by RAS Enterprises, Inc. including that of Pent-R Books, Inc., in order to comply with the law, have taken precautions which result in elimination of mailings even to persons who may desire such mailings. We would estimate that that would include some 50,000 persons.* Under such

* This does not take into account persons in the Armed Forces who may be deprived of mailings, it would seem that one person named "Smith" or "Jones", by obtaining a prohibitory order, would effectively preclude all persons with such a respective last name at such APO address from receiving any mail from us. We have no idea how many persons have the same APO address; we are thus unable to come up with a figure for this problem.

circumstances, in addition to the clear violation of its First Amendment rights, it is further clear that there would not or could not be any willful violation of a prohibitory order. Accordingly, it would seem that this case would be moot, because any judgment, when rendered, could not have any practical legal effect upon the then existing controversy. Indeed, there is simply no controversy here.

To further note the good faith of defendant, we note that, as already stated, Pent-R did attempt to comply with all prohibitory orders, constantly tightening its preventative measures designed to insure that mail would not reach those who did not want to receive its mail. Moreover, when the Goldwater Amendment came into operation, requiring that publishers disseminating sexually oriented advertisements must subscribe to a list of persons who did not want to receive such ads, defendant was the first -- and for a long time the only -- subscriber to that list, which subscription cost it

$10,000 a year.* While continuing to comply with that requirement, Pent-R tested the statute before a three Judge Federal Court; during the course of those proceedings, the Government constantly modified its regulations, under the Goldwater Amendment so that that case was rendered moot and dismissed. One of the modifications followed Pent-R's practice, begun long before the statute was enacted or became effective, of giving a warning notice of the type of contents on an inner sealed mailing envelope. Pent-R Books, et al v. U. S. Postal Service, 328 F.Supp. 297 (1971). To further put this matter in context, we note that although some 200,000 prohibitory orders were issued against Pent-R, only approximately 750 complaints were ever made under the Pandering Law, according to the estimate of our attorney and the informal estimates

*In analyzing the first such list supplied by the Government, we ascertained that 621 names on that list of 31,604 names had bought sexually oriented materials from one of the plaintiffs there on one, two, three or four occassions previously. Thus, some 2% of those on the Government list are prior buyers. Since the Government list includes names of children, if we assume 2.5 children per adult name, then some 5% on that list were prior buyers from plaintiffs there. We cannot even estimate how many on that list were prior buyers from other sources of supply. This further demonstrates Mr. Levy's thesis that persons are pressured into acting to avoid the receipt of ads for sexually oriented materials.

of Postal Service officials -- an alleged violation rate of 0.375% at most. Of the some 750 cases in which hearings were held, approximately 1/3 of these resulted in dismissal in the complaint, while approximately 500 of the cases so far have resulted in the complaint being upheld by the Post Office, with or without a hearing, or some alleged 1/4 of 1% (0.025%) of alleged violations.

The defendant is a thoroughly law abiding corporation. We would estimate that it has spent by this time at least some $300,000 in order to comply with the Pandering Law, as well to comply with the Goldwater Amendment. Its vast expenditures of money, made in an effort to comply with the law, show that it is not a law breaker, but a law observer. To issue an injunction in any case such as this, which has become completely moot by the use of such a computerized method that not only are mailings to protesters avoided, but also mailings to persons who are not protesters, would be to have the Court issue a useless order -- and an unconstitutional one at that.

AFFIDAVIT OF RICHARD S. SCHWARTZ

I understand that it is hornbook law that a statute must be construed so as to avoid raising questions of constitutionality. We believe that we have raised substantial questions as to constitutionality in the operation and effect of the Pandering Law -- not involved in the Rowan case --, which must be faced if this Court is to issue an order. Succinctly stated, it is a fact that the law cannot be complied with except by denying the defendant its right to communicate to those who would receive its communications, and the right of those who receive such communications to receive them. We submit that the law should be so construed in this case as to mean that there is complete mootness in the case at bar, in order to avoid the raising of these questions.

We have bent over backwards to make any possible settlement with the Government. It has never suggested any deficiency in our computerized system for compliance with prohibitory orders. It has never suggested any improvement. Since 1971, at least, it has been fully informed of our system's working. What more does the Government want from us?

AFFIDAVIT OF RICHARD S. SCHWARTZ

Our standard of attempted compliance, our actual rate of better than 99 3/4% compliance with prohibitory orders, speak for themselves. No injunction need be granted. It could have no possible effect whatsoever. Any practical suggestions for improvements in our computerization program will be gratefully accepted. Can we do more?

I now turn to some details.

I understand that according to the purported so called certified file in this case, the purported return receipt for the administrative Post Office complaint is dated However, as noted above, it was our practice and remains our practice to stamp or otherwise indicate on the envelope in which the complaint was contained, the date of its receipt by us. The date of its receipt by us, according to the envelope, which will be annexed hereto, is Oct. 20, 1969, though the date of receipt according to the purported return receipt is October 17, 1969. If we are correct in our date of receipt, then it is patent that the demand for hearing, which our attorney's affidavit indicates was sent on the date it bears, was sent in time, and that we were improperly denied

a hearing before the Post Office Department in this case, a default having been taken without just cause. This raises an issue of fact warranting a trial.

A comparison of the way in which the first mailing was addressed, that is, the physical set up thereof, to the way in which the second mailing was addressed, clearly demonstrates that the second mailing was to a name on a rented list. This is obvious because of the differences; had the second mailing been to the same mailing list as the first, the two mailings would have been identical, letter for letter, type style for type style. Since they are not so identical, it is plain that one of the mailings, probably the latter, was to a rented list. For the reasons we have set forth above, we do not believe that a prohibitory order can be violated, constitutionally, by mailing to a name on a rented list.

AFFIDAVIT OF RICHARD S. SCHWARTZ

WHEREFORE, deponent prays that the plaintiff's motion for summary judgment be denied, that defendant be granted summary judgment dismissing the complaint, and that the prohibitory order be vacated.

RICHARD S. SCHWARTZ

Sworn to before me this
8th day of November, 1973.

GILSOM SAFDEYE
Notary Public, State of New York
No. 34[illegible]78
Qualified in Kings County
Commission Expires March 30, 19 75

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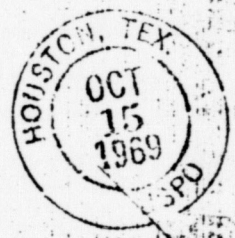
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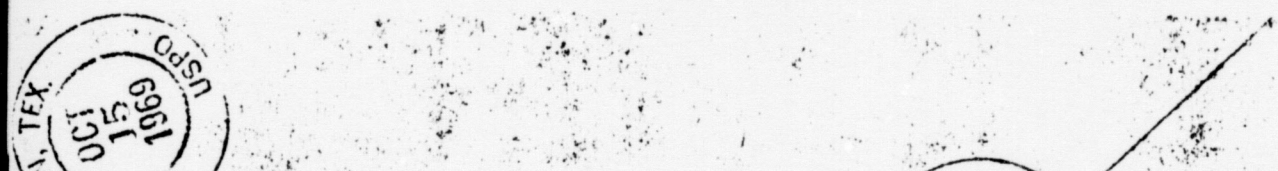

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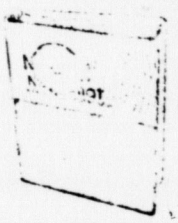

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NEWSFRONT *continued from page 14*

in convention here that Kodak is trial marketing three-solution process for color prints. It may replace present five-solution process. Kodak is concerned about water pollution and silver waste. New process "reduces effluent volume by 40 percent," has bleach-fix that is "completely biodegradable, can be regenerated and allows efficient silver recovery." Seiler said company is working hard to make non-toxic chemicals and cut level of BOD_5. He said Kodak has managed to formulate Ektaprint C stabilizer without zinc, another potential pollutant.

NEW YORK—*Our man Rothschild to speak at communication parley:* Among panelists at 15th annual Wilson Hicks International Conference on Communication Arts (formerly Miami Conference) will be *Popular Photography*'s senior editor, Norman Rothschild. Other participants at meeting, slated for April 28-30 at U. of Miami, Coral Gables, Fla., include Gilbert M. Grosvenor, editor and vice president of *National Geographic*; Erich Hartman of Magnum; Richard Grossman, president of Grossman Publishers; Tony Vaccaro of *Look*; Inge Morath, free-lance photographer and wife of playwright Arthur Miller; Burton McNeeley, undersea photographer; John Schearer, free-lance photographer; Larry Schiller, film maker; Paul Hue, photographer from Holland; Martin Duffy, manager of design and media for A.T.&T. Co.; Marcello Ablaza, official photographer to the president of the Phillippines; Dr. Wesley Clark, dean of the School of Journalism, Syracuse University; and John Olson, staff photographer of *Life*. Conference also serves as annual meeting for American Society of Magazine Photographers.

NEW YORK—*With deep regret, we note the following deaths:*

Charles Rado, founder and president of Rapho Guillumette photo agency that represents photographers throughout the world. Rado often fostered work of unknown photographers, many of whom were exhibited at Museum of Modern Art.

Dr. Emanuel Goldberg, scientist, author, and retired director general of Zeiss Ikon AG. He emigrated from Paris to Israel, where he founded laboratory for applied optics, now known as EL-OP. He wrote *The Fundamentals of Reproduction Technique* and *The Structure of the Photographic Image*.

A. Aubrey Bodine, photo director of *The Baltimore Sunday Sun* magazine, and winner of hundreds of international photo awards. He had worked with *The Sun* papers for nearly 50 years. Many of his best pictures appeared in *My Maryland*.

Kyoichi Sawada, U.P.I. photographer, killed in Pnompenh, Cambodia, while covering the war. He won Pulitzer Prize in 1966 for picture of Vietnamese mother fleeing enemy attack. ○

MEMORANDUM AND ORDER BY DOOLING, D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

: 72 C 611

-against- (DODGE)

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PENT-R-BOOKS, INC., MEMORANDUM

: and

Defendant. ORDER

- - - - - - - - - - - - - - - - - - - -X

Appearances:

LLOYD H. BAKER, Esq. (DAVID G. TRAGER, Esq., United States Attorney, of Counsel) for Plaintiff

HERBERT MONTE LEVY, Esq., for defendant

DOOLING, D. J.

In this action to obtain an order commanding compliance with a Post Office Prohibitory Order issued under 39 U.S.C. § 3008 (formerly § 4009), the plaintiff has moved for summary judgment on the administrative record, and defendant has cross-moved on affidavits. The principal objections of defendant are those raised and disposed of in 69 C 1362, 69 C 1290, 72 C 588, 72 C 606 and/72 C 609, and what has been said in those dockets need not be repeated here.

The only point made in this case by defendant apart from those passed on in the above dockets is that defendant's allegedly timely mailed Request for Hearing

was ignored. It was mailed to the Postmaster at Houston, Texas, from New York City, fourteen days after the receipt of the complaint. In this case, however, remand to consider the timeliness of the mailing is not appropriate. The form of objections allegedly sent to the Postmaster raised no points not resolved against the defendant in the dockets referred to above.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted and defendant's cross-motion is denied. A form of judgment has been approved for entry by the Clerk.

Brooklyn, New York
July 26, 1974.

U. S. D. J.

JUDGMENT.

[illegible]
EASTERN DISTRICT OF NEW YORK
- -X
UNITED STATES OF AMERICA,

-against-

PENT-R-BROOKS, INC.,

Defendant.

72 C 611
(DODGE)
JUDGMENT

- -X

This action came on for hearing on the cross-motions of the parties for summary judgment before the Honorable John F. Dooling, Jr., District Judge, and the motion of plaintiff having been granted and that of defendant having been denied in the decision duly rendered, it is

ORDERED and ADJUDGED that defendant PENT-R-BROOKS, INC., its agents and assigns (1) refrain from any further mailings to B.W.S. DODGE, 122 Plantation Dr., Houston, Texas 77024,

or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder or resident; (2) immediately delete the above-named party from all mailing lists owned or controlled by it, its

JUDGMENT

agents or its assigns; and (3) immediately abstain from any sale, rental, exchange or other transaction involving mailing lists bearing the name of the party named above.

Brooklyn, New York

July 26,1974.

Approved:

U. S. D. J.

CLERK

UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF NEW YORK.

- -X

UNITED STATES OF AMERICA,

Plaintiff,

v.

PENT-R-BOOKS, INC.,

Defendant.

- -X

CIVIL ACTION NO. 72C 612.

DOCKET ENTRIES

U.S. v. PENT R BOOKS, INC.

72C 312

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
5/9/72	Complaint filed. Summons issued.	1J&S
5-26-72	Summons returned and filed. Deft srvd 5-25-72.	2
9-27-73	Pltffs notice of motion ret 10-15-73 and memo in support of motion for summary judgment filed.	3/4
11-29-73	Notcie of cross motion and memorandum in support of deft's cross motion for summary judgment filed.	5/6
7-29-74	By DOOLING, J. - Memorandum and order dtd 7-26-74 granting pltff's motion for summary judgment & directing Clerk to enter judgment filed.	7
7-29-74	JUDGMENT dtd 7-26-74 granting permanent injunction against deft filed.(p/c mailed to attys)	8
9-19-74	Notice of appeal filed. Duplicate mailed to C of A & pltff.jn	9

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

720 612

- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PENT-R BOOKS, INC.,

Defendant.

- X

COMPLAINT

Civil Action No.

Plaintiff, UNITED STATES OF AMERICA, by its attorney, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, complaining of the defendant, alleges:

1. This Court has jurisdiction of this action pursuant to Public Law 90-206, Sec. 301 and Title 28, U.S.C., Sec. 1345.

2. The defendant is a New York corporation having an office for the conduct of business at 203 Kings Highway, Brooklyn, New York.

3. On or about May 28, 1969, defendant mailed or caused to be mailed through the U. S. mail to P. Sample, Houston, Texas (hereinafter referred to as "addressee") material offering for sale certain advertisement for Photographic Manual of Sexual Intercourse.

COMPLAINT

4. The said item was mailed from Brooklyn, New York, within the Eastern District of New York.

5. The above-described mailing consisted of photographic advertisements which the addressee believes to be erotically arousing or sexually provocative.

6. The addressee requested the Postmaster General to issue an order directing defendant, its agents or assigns, to refrain from further mailings of such material to him.

7. Upon receipt of this request and pursuant to Public Law 90-206, Sec. 301, on June 2, 1969, the local Postmaster, by order of the Postmaster General, issued Prohibitory Order No. 1925, which ordered and directed defendant, its agents and assigns, to delete his name from any sales or transactions involving lists bearing his name, effective 30 days after receipt of the order.

8. A copy of the order was mailed to defendant by registered mail on or about the date it bears.

9. Thereafter, the Postmaster General had reason to believe that defendant or someone acting on its behalf violated the order.

10. On or about September 27, 1969, in violation of Prohibitory Order No. 1925, defendant, or someone acting on its behalf, mailed or caused to be mailed through the United States mail to the addressee, material such as that described in paragraph 3 of the complaint.

COMPLAINT

11. On October 15, 1969, the local Postmaster, by order of the Postmaster General, issued a complaint advising that evidence had been received that defendant, or someone acting on its behalf, had violated Prohibitory Order No. 1925, and advising defendant that any response for hearing had to be filed within 15 days.

12. A copy of the complaint was mailed to defendant by registered mail on or about the date it bears.

13. Defendant did not request a hearing or otherwise respond to the complaint.

14. On November 3, 1969, a determination was made that defendant or someone acting on its behalf had violated Prohibitory Order No. 1925.

15. A copy of the determination was mailed to defendant by registered mail on or about the date it bears.

16. The Postmaster General thereafter requested the Attorney General, pursuant to the provisions of Public Law 90-206, Sec. 301, to make application to a district court of the United States for an order directing defendant to comply with the order.

COMPLAINT

WHEREFORE, plaintiff, UNITED STATES OF AMERICA, prays:

a. That the court enter judgment herein requiring defendant, its agents and assigns, to comply with Prohibitory Order No. 1925, and more specifically, that this Court order and direct defendants, its agents and assigns, in conformity with this order to cease and desist from making any further mailings to the designated addressee from all mailing lists owned or controlled by defendant, its agents or assigns, and to refrain from selling, renting, exchanging, or engaging in any other transaction involving mailing lists bearing the name of said addressee.

b. That the Court grant to plaintiff such other and further relief as may be just and proper.

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By Lloyd H. Baker
Lloyd H. Baker
Assistant U. S. Attorney

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

NOTICE OF MOTION

- against -

72 C 612

PENT-R-BOOKS, INC.,

Defendant.

- X

PLEASE TAKE NOTICE that upon the annexed certified copy of the record of the proceeding in the Post Office Department, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a term for the hearing of motions to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, Courtroom 8, on the day of , 1973, at ~~9:15~~ o'clock in the ~~fore~~noon of that day, or as soon thereafter as counsel may be heard, for

GOVERNMENT'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

an order pursuant to Rule 56 granting summary judgment to the plaintiff, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: Brooklyn, New York
September [illegible], 1973

ROBERT A. MORSE
United States Attorney
Attorney for the United States
of AMERICA

By:

_____
Lloyd H. Baker
Assistant U. S. Attorney

TO:
HERBERT MONTE LEVY, ESQ.
295 MADISON AVENUE
NEW YORK, NEW YORK 10017

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS.

UNITED STATES OF AMERICA

POST OFFICE DEPARTMENT GC-6812

Washington, D.C. 20260

March 27 19 70

CERTIFICATION

I hereby certify that the annexed documents constitute true copies of original records which are in the official custody of the Post Office Department, to wit: P.O. Docket No. R-11, H-64. (P. Sample).

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the Post Office Department to be affixed, on the day and year first above written.

I. F. Kardos
Deputy Assistant General Counsel
Mailability Division

POD Form 2159
Mar. 1970

shall you turn? What can you do? You can read this book ... SAVE MONEY! Enclosed full payment with your order and save postage, etc.

1827a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

ORDER

In the Matter of Violation of
Prohibitory Order No. 1925
Issued Against

Pent-R-Books

Box 81

Brooklyn, N. Y. 11223

and agents or assigns, pursuant to authority of Title 39, U.S. Code, §4009.

P. O. Docket No. E-11, H-64

Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned Prohibitory Order.

CARL HUSER, OFFICER IN CHARGE
BY:

BURL C. MILLER
Postmaster

SUPT. MAILING REQUIREMENTS
HOUSTON TEXAS 77002
City State ZIP Code

[POSTMARK]

Dated: November 3, 1969

POD Form
May 1968 2154

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE

POSTMARK OF DELIVERING OFFICE

Case No. [illegible]

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article "3811 FOR RECEIPT REQUESTED."

RETURN TO

NAME OF SENDER
Postmaster, Attn: Postal Services Section

STREET AND NO. OR P.O. BOX
General Post Office, 401 Franklin Avenue

POST OFFICE, STATE, AND ZIP CODE
Houston, Texas 77002

POD Form 3811 Apr. 1972 (05-10-71045-1)

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. 36953

CERTIFIED NO.

INSURED NO.

1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

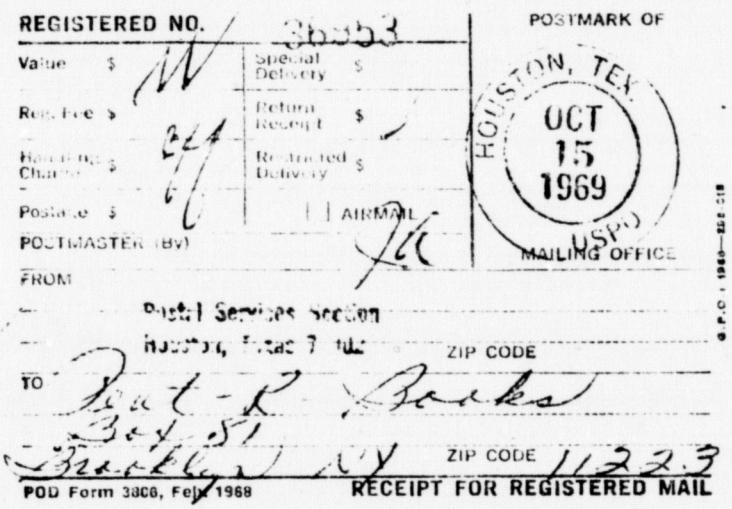
DATE DELIVERED OCT 17 19 69

3 ADDRESS WHERE DELIVERED (*only if requested*)

055-10-71048-10 GPO

1829a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



REGISTERED NO. 30053

POSTMARK OF

Value $ N

Special Delivery $

Reg. Fee $ 24

Return Receipt $ -

Handling Charge $ 0

Restricted Delivery $

Postage $

AIRMAIL

POSTMASTER (By) JC

MAILING OFFICE

HOUSTON, TEX.
OCT
15
1969
USPO

FROM

Postal Service Section
Houston, Texas 77001

ZIP CODE

TO Dr. C. R. Burks
304-51
Brooklyn NY ZIP CODE 11223

POD Form 3806, Feb. 1968 RECEIPT FOR REGISTERED MAIL

G.P.O. : 1968—BEE 518

1830a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT

COMPLAINT

In the Matter of Violation of
Prohibitory Order No. 1925
Issued Against

Pent-R-Books, Inc.

Box 81

Brooklyn, N. Y. 11223
and agents or assigns.

On behalf of:

P. Semple
Complaining Addressee

P. O. Docket No. R-11, M-64

On the 4th day of June, 1969, you received Prohibitory Order No. 1925, copy of which is attached hereto, issued against you and your agents or assigns under authority of Title 39, U.S. Code, §4009, upon request of the above-named addressee.

Evidence has been produced that the above-captioned Prohibitory Order has been violated by you [or your agents or assigns] as follows:

1. By further mailings to the addressees listed in the order. See Exhibit attached hereto.
2. You failed to immediately delete from mailing lists owned or controlled by you or your agents or assigns the names of the addressees listed in the order. See Exhibit attached hereto.
3. You or your agents or assigns have sold, lent, exchanged, or made other transactions involving mailing lists bearing names of addressees listed in the order. See Exhibit attached hereto.
4. Other (specify):

[Strike inapplicable items].

Any response to this Complaint or request for a hearing with respect thereto must be filed, in writing, in the Office of the Regional Counsel, Post Office Department, (Address), with the undersigned postmaster, within fifteen (15) days after receipt of this Complaint. Attached hereto is copy of the Department's Rules of Practice relative to answering this Complaint and requesting a hearing in the matter.

GRANVILLE W. ELDER, POSTMASTER
BY:

Burl C. Miller
BURL C. MILLER
Postmaster

[POSTMARK] HOUSTON, TEX. OCT 15 1969 USPO

Dated: October 15, 1969

SUPT. MAILING REQUIREMENTS
HOUSTON, TEXAS, 77002
City State ZIP Code

POD Form 2153
May 1968

P. O. BOX 81
BROOKLYN, N. Y. 11223

HOUSTON, TX POSTAL SVCS. CTR
OCT
6
1969
REC'D

BROOKLYN
N. Y.

Received 9-27-69
Envelope obtained on ground
Paul W. Sample
3711 San Felipe Rd
Houston Texas

Prohibitory Order No. 1935 dated 6-2

FIRST CLASS MAIL

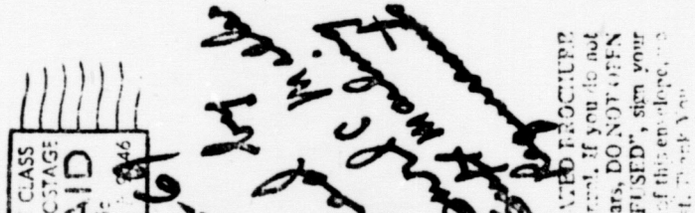
P SAMPLE
3711 SAN FELIPE RD
HOUSTON TX 77027

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED [illegible] offering for sale to Adults Only, a new marriage ma[illegible] wish this mail or if you are not over the age of 21 ye[illegible] THIS ENVELOPE! Simply mark this envelope "R[illegible] initials and return it to your mailman. Upon the return [illegible] will endeavor to remove your name from our mailing [illegible]

PERSONAL

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



FIRST CLASS
PERMIT No. 28005
BKLYN, N.Y.

BUSINESS REPLY MAIL

NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES

POSTAGE WILL BE PAID BY

PENT-R BOOKS INC.

P.O. Box 1555,
Grand Central Station,
New York, N.Y. 10017

1832a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

IF YOU DON'T BUY IT WITH OUR SPECIAL MONEY BACK GUARANTEE

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"

FIRST EDITION SPECIAL OFFER - $9.98 (Limited Time Only)

Please check appropriate box!

☐ Please ship book and place my name on your mailing list.
☐ I am not ordering at this time but place my name on your mailing list.
☐ Remove my name from your mailing list.

Print Name ..... Age .....

Address .....

City ..... State ..... Zip .....

I hereby represent that I am over the age of 21 years.

Signature .....

P SAMPLE
3711 SAN FELIPE Rd
HOUSTON TX 77027

17

(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PLANT-R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 1001?

Gentlemen:

Please send me in plain sealed wrapper ____ copy of "The Photographic Manual Of Sexual Intercourse" at the First Edition Special price of only $9.98 per copy. I am over the age of 21 years and have signed the statement on the left to that effect. I understand that if I am not completely satisfied I may return the book within 10 days after I receive it for an immediate refund of the purchase price.

☐ Regular Edition: Handsome Kivar Binding only $9.98

☐ Deluxe Edition: Gold Stamped Casebound Library Volume only $12.98

☐ I have enclosed $ _____. ☐ Cash ☐ Check ☐ Money Order

☐ I have enclosed a $2 Deposit. Please ship C.O.D.

SAVE MONEY! Enclose full payment and save Postage and C.O.D. fees!!

1833a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

READ WHAT OTHERS ARE SAYING ABOUT THIS BOOK

This is the best done book of its kind I have ever seen. I was concerned about the frank way in which the photographs depicted the various positions of sex, but the publishers assure me that this book would be offered only to adults." Dr. C.M.

This is the first marriage manual I've seen that didn't beat around the bush." Mrs. W.R. New York City.

"This book gave us a whole new outlook on sexual possibilities we never knew existed." Mr. & Mrs. J.K., Los Angeles, Calif.

"I wish this book had been published 12 years ago when we were first married." Mr. & Mrs. A.S. New York City.

I only wish I had seen this book early in my married life. My marriage finally failed for just three reasons which are covered in chapter Seven of the book. If only I had known what this book now makes so clear." Divorcee who was asked to comment.

We expect to be married in a few months. We feel that this book will help get us off to a good start in sexual matters. Thank you." Mr. & Mrs. T.B. & C.K. Chicago, Ill.

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE

TABLE OF CONTENTS

With the final chapter just complete a few short weeks ago, **THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE** is the latest, most up-to-date sex manual on the market. It is the sex book today which is presented to you; this is no compilation of ancient wisdom. People change, even the techniques of sex change. This is today's guide to sexual intercourse written for today's people! We ask you to review the table of contents:

Chapter I ..... History of Sex
Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of Sex
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral-Anal Sexuality
Chapter IX ..... Male Oral-Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
Chapter XII ..... Sexual Intercourse During Menstration and Pregnancy
Chapter XIII ..... Satisfying Substitutes
Chapter XIV ..... Sexual Intercourse for the Old, Ill and Handicapped
Chapter XV ..... Compiling Your Own Handbook

We venture to suggest that very few other books offer the complete coverage of this single volume. The above table of contents but suggests the scope of what is offered. Each chapter is devoid of clarity, of down to earth language which takes you directly to the heart of the matter. The book was not written for the professional, although we fully expect that many professional will insist upon having a copy of this book on their bookshelves.

Those who are considering marriage will want a copy of the book. Those who are married and are just beginning to find certain tedium in their connubial bed will want to seek here for added answers to their problem. Those who are ill, old, or handicapped will realize that their sex life need not be the gnawing, frustrating problem it now seems to be.

Perhaps you have feelings which you think are unnatural, even abnormal. Yet your sex nature cries out for fulfillment. Which way shall you turn? What can you do? You can read this book!

OUR GUARANTEE

TRY IT — DON'T BUY IT — Words can't express our money back offer! We have put years of time, money and effort into this book. We believe strongly in this book. We feel this book has long been needed in our society to overcome the ignorance and misinformation. We feel the book will be of immense value to those couples who want to improve their sex lives and of the truth we have stated in this book. Let us prove this simple, straightforward guarantee to you. Order a copy of THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE. Read it. Then within seven days after reading this book you do not feel powerful in your knowledge of sex and your partner is not enjoying new heights of sexual fulfillment and pleasure simply return the book. Every penny of your purchase price will be immediately refunded. What could be fairer than that? You have nothing to lose but the few moments it takes to fill out and mail the enclosed order form. But you have an important part of your life you owe it to yourself and to your sex partner to find out more about the pioneering book of sexual knowledge. Please do not delay. A postcard requesting this coupon is enclosed for your convenience. And please don't bother trying to bring it because if you are dissatisfied for any reason we will promptly refund your money without question or delay. Please order today. If only you had ordered before you did!

FIRST EDITION SPECIAL OFFER (Limited Time Only)

The regular price of "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is $12.98. But in the price in book stores throughout the country and many mail order firms are selling this book for. To the people who write in for the advantage of our special pre-publication $9.98 offer, we are making this "First Edition Special Offer" for a limited time only. You now purchase "The Photographic Manual Of Sexual Intercourse" with Handsome Kivar Binding for only $9.98 and save $3.00 for a limited time only. This special offer may not be repeated again! You may have one chance and one chance only to take advantage of this tremendous offer. Please order today! We have books in stock for immediate shipment. Our money back guarantee of course still applies!

THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE ONLY $9.98

- 256 Pages, Printed On The Finest Heavy-Weight Pure White Bond And Rich Gloss Enameled Paper!
- Handsome Kivar Binding (Special Deluxe Binding Also Available)
- Over 150 Actual Photographs In Black & White And Full Color!
- 40 Full Page Photos & 16 Full Page Full Color Photos!

YOU MUST BE OVER THE AGE OF 21 YEARS TO ORDER
No Books Will Be Shipped To Unmarried Minors!

USE ENCLOSED ORDER FORM AND POSTAGE PAID ENVELOPE.
(C.O.D. Orders Accepted But Must Be Accompanied By A $5. Deposit.)

PENTRI BOOKS, INC. P.O. BOX 1545
Grand Central Station, New York, N.Y. 10017

Gentlemen:

Please rush me in plain sealed wrapper _____ copies of THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE.
[ ] Special First Edition Handsome Kivar Binding $9.98
[ ] Deluxe Edition Gold Stamped Embossed Library Volume $12.98
[ ] Please send me absolutely free _____ [ ] Black & White [ ] Color Photos.
[ ] I have enclosed $5. Deposit. Please ship C.O.D.

I understand that if I am not completely satisfied I may return the book within seven days after receipt for any reason and obtain a full refund of the purchase price.

I hereby request that I am over the age of 21 years and I have signed below.

Signature

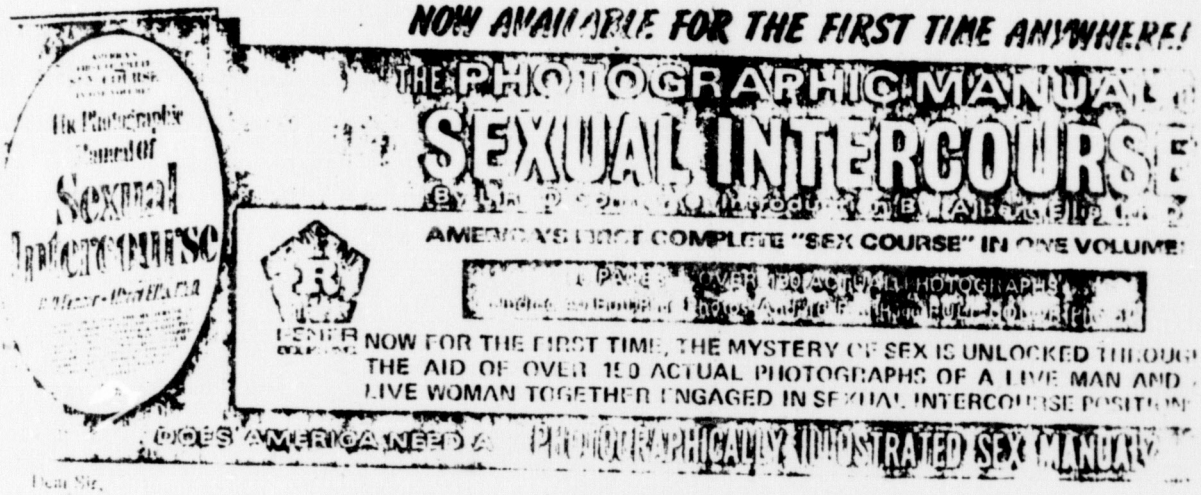
Print Name

Address

City State Zip

SAVE MONEY! Enclosed full payment with your order and save postage and C.O.D. charges!

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS



Dear Sir,

No one is born with knowledge of how to engage in sexual intercourse. How then is one to learn?

The schools, up until at best very recently, have consistently and purposely ignored sex education. Ask a school principal or school board official and he will say, "We leave that instruction up to parents." Ask a parent if he or she is teaching sex education to their children and you may hear, "Don't worry, she'll learn on her own." or "Ask his father, that's his job!" And if the parents fail where is sexual instruction and knowledge to be obtained? Would you say the school yard or ball field, the corner candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear bits of conversations, sexual experience. Sneak a look at a few pornographic pictures. Listen to a few line dropped in a motion picture. Listen to a TV comedians' subtle jokes. And above all, they force our youth to hear every old-wives tale, every unhealthy misconception, every fallacy. And then, shall we put ourselves on the back ... for we have protected mankind's ... We have protected our society from information on sexual intercourse! Naturally, on the day our son or daughter is married by some miraculous happenstance, they will leave the wedding ceremony with a complete, accurate, broad knowledge of sex. No one stands to take credit for this knowledge. No one seems to know how our newly married couple has obtained sexual knowledge. On fact no one knows. If our newly married couple has obtained sexual knowledge, let us all hope that our mythical couple have a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something so private, sometime personal, something one person does not care to reveal to another. In far too many cases a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is fantastic! Premarital promiscuity is at it's highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our movie theatres are showing lesbian and homosexual features to packed houses. ... **AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL**, we ask again? We think yes, most definitely yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE REALLY NECESSARY?

We say yes ... because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indispensible aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader, so that the reader may evaluate them and come to his or her own conclusions. We feel that to publish our book **"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"** without photographs would be a disservice to our readers and would confuse rather than enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It was not written for beginners or minors, though much of the information it contains would be found useful by an adult who has the responsibility of teaching the young or inexperienced. The book was designed to teach men and women, even with years of sexual experience, what they may have been doing wrong and what they could and should do to give their mate new sexual pleasures, complete sexual satisfaction and to inspire their mate to new love, devotion and happiness.

The following brochure will give you additional details on the contents of the book. We have also enclosed an order form for your convenience.

We suggest that you order a copy of **"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"**, read it, show it to your doctor and if you decide that it does not deserve a permanent place on your bookshelf, simply return it for an immediate refund of your money. It's as simple as that. Our experience has shown us that if we offer a product of value and merit we won't get many returns. You have absolutely nothing to lose and a great deal of knowledge and happiness to gain.

With my sincere personal good wishes,

Ronald Alvin

Ronald Alvin

DENTON BOOKS INC. P.O. BOX 1555,

GRAND CENTRAL STATION, NEW YORK, N.Y. 10017

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CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

A BREAKTHROUGH IN SEX EDUCATION

No dolls, no drawings, no illustrations, no pencil sketches, no partially obscured over-printed photographs, no tracings where one sheet must be placed upon another, no men and women wearing skin tights, no tricks where men and women appear in the photographs separately! Now, for educational purposes only, over 100 coital positions are clearly photographed for instruction purposes in over 150 large clear photographs of a real living nude man and a real living nude woman, a married couple, together engaged in sexual intercourse positions with accompanying descriptive text in the most sophisticated, modern and up-to-date sex manual ever published!

AVAILABLE FOR THE FIRST TIME TO THE ADULT GENERAL PUBLIC

This brand new just published giant compendium of sex you will find one of the most informative, educational, instructive, eye opening and mind clearing sexual manuals that you have ever seen or read. It offers the frankest, clearest, most detailed and explicit information through words and actual photographs on "HOW TO ENGAGE IN SEXUAL INTERCOURSE" that has probably ever been written! Over 100 coital positions are fully described in plain language and photographed in over 150 FULL COLOR AND BLACK & WHITE DETAILED PHOTOS!

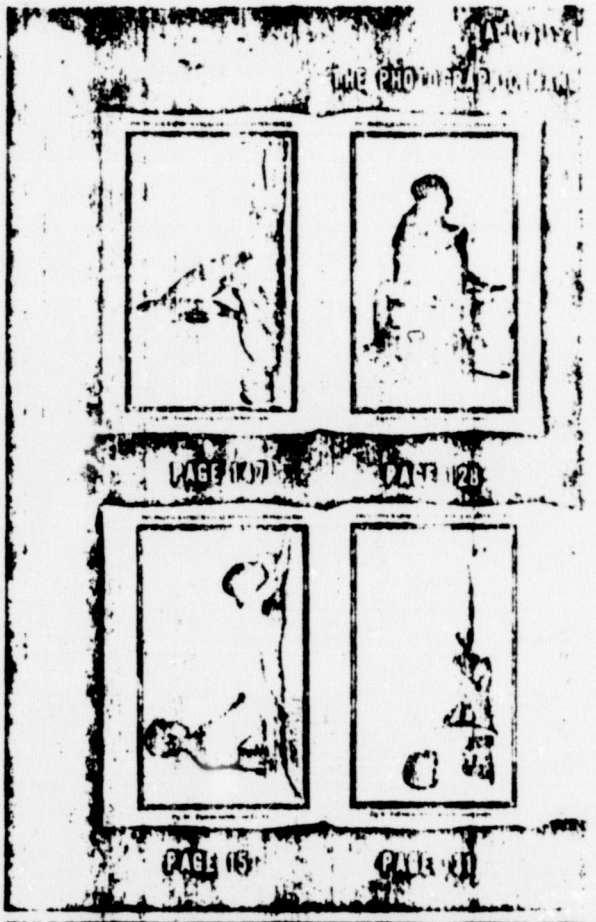
THERE HAS NEVER BEEN A BOOK LIKE THIS BEFORE!

Many will call "THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" America's First Sex Course." Because for you and your wife, that is exactly what it can be. A step by step sex course in words and clear concise photographs of how to engage in the many forms of physical love and sexual intercourse! It can turn dull confused routine "quickie" sex into exciting sexual episodes which continue to improve each time and provide to greater degrees of pleasure and satisfaction than you or your wife ever thought possible!

Here at last, are the techniques which can transform the stale, dull apathy and boredom of the marital act into a series of invigorating, refreshing, fulfilling experiences . . . each more thrilling than the last!

The Photographic Manual Of Sexual Intercourse will teach you step by step, in minute detail, each touch, each movement, each kiss, each sensitive area of the body, each technique available to you for giving your mate and yourself new heights of sexual enjoyment and contentment. More, in fact, than you ever thought possible!

NOW! Learn from down to earth solid straight no-punches pulled plain language facts and over 150 clear educational Full Color and Black and White photographs the unusually helpful facts you should know about the many varied aspects of sexual intercourse!



OVER 150 FULL COLOR AND ... SHOW YOU HOW TO BE A ...

Now for the first time in any book you can see with your own eyes in large full color and black and white actual photographs the best positions to use for a wide variety of special purposes and sexual effects!

- Discover the positions that narrows the vaginal opening giving the man more stimulation!
- Learn the position that automatically forces the woman's thighs to add to penile stimulation!
- Discover the positions which most directly excite the clitoris!
- Find out what position holds the male organ after climax preventing rapid contraction of the organ!
- Learn the position that allows the penis to penetrate to the neck of the uterus while at the same time providing even more sensation from the caressing touch of the scrotum moving upon the woman!
- Learn the position that holds a partial erection most firmly!

This is only a partial list of what the photographs and text will teach you in this amazing new book!

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $100

POSTMARK OF DELIVERING OFFICE

Case No. 1925

INSTRUCTIONS: Show name and address below and complete instructions on other side where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER
Postmaster, Attn: Postal Services Section

STREET AND NO. OR P.O. BOX
General Post Office, 401 Franklin Avenue

POST OFFICE, STATE, AND ZIP CODE
Houston, Texas 77002

POD Form 3811 Apr. 196[illegible]

c55—16—71648-10

INSTRUCTIONS TO DELIVERING EMPLOYEE

☑ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO. 36870

CERTIFIED NO.

INSURED NO.

1 SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

Clint R

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

D H Rawsk

DATE DELIVERED

JUN 4 1969

SHOW WHERE DELIVERED (*only if requested*)

Box 81 11 23

c55—16—71648-10 GPO

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

REGISTERED NO. 36870

POSTMARK OF

Value $ NV		Special Delivery $	
Reg. Fee $		Return Receipt $ ✓	
Handling Charge $		Restricted Delivery $	
Postage $		☐ AIRMAIL	

POSTMASTER (By)

MAILING OFFICE

FROM Postal Services Section
Houston, Texas 77002 ZIP CODE

TO Grant-R-Banks
[illegible] St
Brklyn NY 11223 ZIP CODE

POD Form 3806, Feb. 1968 RECEIPT FOR REGISTERED MAIL

G.P.O. : 1968—296-015

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
PROHIBITORY ORDER

In the Matter of

Post-R-Books
Mailer

Box 81

Brooklyn, N. Y. 11223
and agents or assigns

PROHIBITORY ORDER

NO. 1925

WHEREAS, we were furnished a mailing piece containing advertising matter which you mailed or caused to be mailed to

P. Sample
(Name of Addressee)

3711 San Felipe Rd. Houston, Texas, 77027;
(Address)

and

WHEREAS, said addressee has determined your advertisement to be a pandering advertisement offering for sale erotically arousing or sexually provocative matter, and

WHEREAS, said addressee has requested the issuance of an order pursuant to the provisions of Title 39, U.S. Code, §4009, a copy of which law is printed on the reverse side hereof, directing you and your agents or assigns, to refrain from making any further mailings to him [and his minor children residing with him who have not attained their nineteenth birthday].

NOW, THEREFORE, pursuant to the cited statute, you, your agents and assigns, are hereby ordered:

(1) To refrain from any further mailings to the following parties at the indicated address, or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder, resident, boxholder, postal patron, rural route boxholder, and local, effective on the 30th calendar day after receipt of this order:

P. Sample

ADDRESS: 3711 San Felipe Rd.
(Street)

Houston (*City*) Texas (*State*) 77027 (*ZIP Code*)

(2) To immediately delete the above-named parties from all mailing lists owned or controlled by you or your agents or assigns.

(3) To immediately abstain from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the parties mentioned above.

GRANVILLE M. ELDER, POSTMASTER
BY:
HUBE C. MILLER
SUPT. MAILING REQUIREMENTS
HOUSTON, TEXAS 77002
City State ZIP Code

[POSTMARK]

HOUSTON, TEX. JUN 2 1969 USPO

Dated June 2, 1969

POD Form 2152
May 1968

"**§4009. Prohibition of pandering advertisements in the mails**

"(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postmaster General to refrain from further mailings of such materials to designated addressees thereof.

"(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postmaster General shall issue an order if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addressees.

"(c) The order of the Postmaster General shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressees, effective on the thirtieth calendar day after receipt of the order. The order of the Postmaster General shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

"(d) Whenever the Postmaster General believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, he shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for his belief and request that any response thereto be filed in writing with the Postmaster General within fifteen days after the date of such service. If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

"(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punished by the court as contempt thereof.

"(f) Receipt of mail matter thirty days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

"(g) Upon request of any addressee, the order of the Postmaster General shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

"(h) The provisions of subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, United States Code, shall not apply to any provisions of this section.

"(i) For the purposes of this section—

"(1) mail matter, directed to a specific address covered in the order of the Postmaster General, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postmaster General's order; and

"(2) the term 'children' includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.".

(b) The table of contents of chapter 51 of title 39, United States Code, is amended by adding at the end thereof—

"4009. Prohibition of pandering advertisements in the mails."

SEC. 302. The provisions of this title shall become effective on the one hundred and twentieth day after the date of enactment of this Act.

Effective Date: 4-15-68.

1841a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

POST OFFICE DEPARTMENT
NOTICE FOR PROHIBITORY ORDER AGAINST SENDER OF PANDERING ADVERTISEMENT IN THE MAILS

I, P. Sample (Print), addressee [parent of minor addressee] of the enclosed mailing from PENT-R BOOKS INC. P. O. Box 81, Brooklyn, N. Y. (Print) Zip Code 11223, consider this mailing to be a pandering advertisement which offers for sale erotically arousing or sexually provocative matter.

Accordingly, under the provisions of Title 39, United States Code, §4009, I request that the above named mailer, and his [its] agents or assigns, be directed to refrain from making any further mailings to me [as well as to my below-listed minor children residing with me who have not attained their nineteenth birthday].

P. Sample
Signature

May 29, 1969
Date

3711 San Felipe Rd.
Street

Houston, Texas 77027
City State ZIP Code

NAMES OF CHILDREN	BIRTH DATE

NOTE → This notice must be accompanied by the objectionable advertisement and the envelope, or other mailing wrapper, in which the advertisement was received.

POD Form 2150
May 1968

PENT-R BOOKS INC.

P. O. BOX 81
BROOKLYN, N. Y. 11223

Received and opened May 28. 1969 P. Sample

BROOKLYN N. Y.

FIRST CLA
U. S. POST
PAI
6c
Permit # 9

FIRST CLASS MAIL

P SAMPLE
3711 SAN FELIPE RD
HOUSTON TX 77027-

st be over the age of 21 years and sign statement to that effect above to order. Me

PERSONAL

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRAT
offering for sale to Adults Only, a new marriage manu
wish this mail or if you are not over the age of 21 years
THIS ENVELOPE! Simply mark this envelope "REFU
initials and return it to your mailman. Upon the return of
will endeavor to remove your name from our mailing list.

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

TRY IT! DON'T BUY IT! WITH OUR SPECIAL MONEY BACK GUARANTE

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"
FIRST EDITION SPECIAL OFFER - $9.98 (Limited Time Only)

Please check appropriate box!
Please ship book and place my name on your mailing list.
I am not ordering at this time but place my name on your mailing list.
Remove my name from your mailing list.

Print Name ..... Age .....
Address .....
City ..... State ..... Zip .....
(Must be over the age of 21) .....

147
P SAMPLE
3711 SAN FELIPE RD
HOUSTON TX 77027

*(You must be over the age of 21 years and sign statement to that effect above, to order. No books will be shipped to unmarried minors.)

Please check the spelling of your name and address as it appears above. If any errors exist, please make the necessary corrections with a pen.

PENT-R BOOKS, INC.
P.O. Box 1555
Grand Central Station
New York, N.Y. 10017

Gentlemen:

Please send me in plain sealed wrapper_ of "The Photographic Manual Of Sexu course" at the First Edition Special pric $9.98 per copy. I am over the age of 21 y have signed the statement on the left to th I understand that if I am not completely s may return the book within 10 days after it for an immediate refund of the purcha

* Regular Edition: Handsome Kivar Bindi $9.98
Deluxe Edition: Gold Stamped Casebou
Library Volume only $12.98

I have enclosed $ _____ Cash
Money Order
I have enclosed a $2 Deposit. Please ship

SAVE MONEY! Enclose full payment and Postage and C.O.D. fees!!

1843a

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

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C.O.D.

save

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

"USEFUL POSITIONS OF SEXUAL INTERCOURSE"

A VISUAL AID TO SEX EDUCATION! Now for the first time, for educational purposes only, see a live man and a live woman, a married couple, together on film, demonstrating 30 useful sexual intercourse positions!

AVAILABLE IN TWO PARTS – 8MM AND SUPER 8 BLACK & WHITE OR FULL COLOR

PART 1 *15 USEFUL POSITIONS INCLUDING:*

- Male Dominant – Female Raising One Leg
- Female Locking Legs Around Male For Better Penetration
- Basic Male Recumbent Position
- Female Sitting Upright Straddling Male
- Female Seated Position On Male
- Female "Seated On Peg" Position
- Sitting On Edge Of Bed Position

PART 2 *15 USEFUL POSITIONS INCLUDING:*

- Straddle Position For Greatest Clitoral Contact
- Exotic Relaxed Position
- Female Dominant – Male Sitting Up
- Sitting Face-To-Face
- Saddle Face-To-Face
- Posterior Position
- Male Dominant Posterior Position

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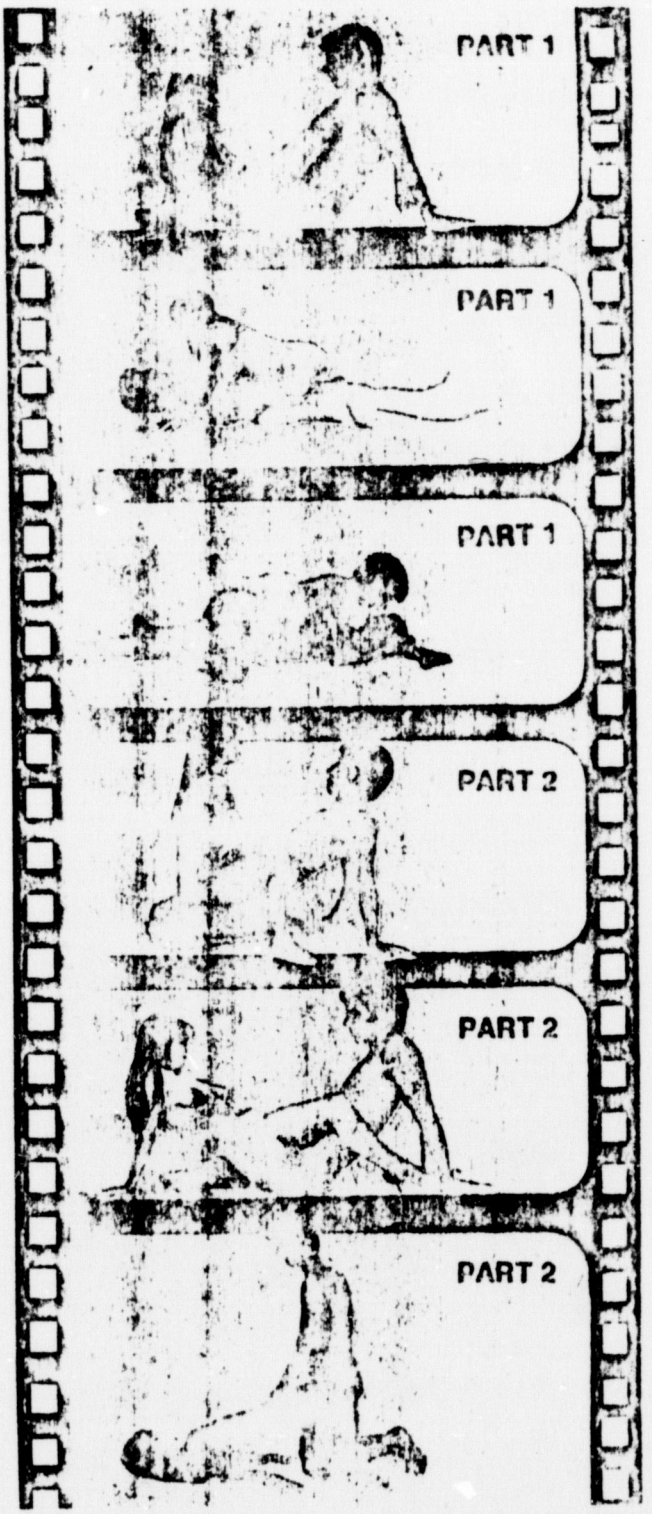
P.O. Box 1555, Grand Central Station, New York, N.Y. 10017



CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

USEFUL POSITIONS OF SEXUAL INTERCOURSE

PRICE LIST

	REGULAR 8MM—150 FT. BLACK & WHITE	SUPER 8 175 FT. BLACK & WHITE	REGULAR 8MM—150 FT. FULL COLOR	SUPER 8 165 FT. FULL COLOR
PART ONE	☐ $15.00	☐ $17.00	☐ $30.00	☐ $32.00
PART TWO	☐ $15.00	☐ $17.00	☐ $30.00	☐ $32.00
COMPLETE EDITION	300 FT. ☐ $25.00	340 FT. ☐ $29.00	300 FT. ☐ $50.00	340 FT. ☐ $54.00

AVAILABLE TO MATURE ADULTS OVER THE AGE OF 21 YEARS ONLY!
NO FILM WILL BE SHIPPED TO UNMARRIED MINORS!

NOTICE!

This film was produced to teach married couples how to derive the utmost pleasure, excitement, sensation, ecstasy, satisfaction and happiness from sexual intercourse. It was definitely NOT produced for persons seeking cheap thrills or those seeking to "ogle" at films of persons engaged in sexual intercourse.

SPECIAL 8MM AND SUPER 8 VIEWERS AVAILABLE ..... *ONLY $5.00 EA.*

ORDER FORM

PENT-R BOOKS INC.
Box 1555, Grand Central Station, New York, N.Y. 10017

Gentlemen:

☐ Enclosed please find $_____

☐ Cash ☐ Check ☐ Money Order

☐ Enclosed please find $5 Deposit. Please ship C.O.D.

Please ship the following films.

"UNIQUE POSITIONS OF SEXUAL INTERCOURSE"

☐ 8mm Black & White-Part 1 ☐ Part 2 ☐ Complete Edition
☐ Super 8 Black & White-Part 1 ☐ Part 2 ☐ Complete Edition
☐ 8mm Full Color -Part 1 ☐ Part 2 ☐ Complete Edition
☐ Super 8 Full Color—Part 1 ☐ Part 2 ☐ Complete Edition
☐ 8mm Film Viewer ☐ Super 8 Film Viewer

I hereby represent that I am over the age of 21 years and I have signed to that effect below.

BY _____
signature

PRINT NAME _____

ADDRESS _____

CITY _____

Save Money! Enclose full payment and save postage and C.O.D. charges!

NOW AVAILABLE ON 8MM FULL COLOR OR BLACK & WHITE FILM

USEFUL POSITIONS OF SEXUAL INTERCOURSE

a visual aid to
SEX EDUCATION
featuring
A MARRIED COUPLE
together engaged in
SEXUAL INTERCOURSE POSITIONS

CERTIFIED COPIES OF U. S. POST OFFICE ORDERS

USEFUL POSITIONS OF SEXUAL INTERCOURSE

PRICE LIST

	REGULAR 8MM—150 FT. BLACK & WHITE	SUPER 8 175 FT. BLACK & WHITE	REGULAR 8MM—150 FT. FULL COLOR	SUPER 8 165 FT. FULL COLOR
PART ONE	☐ $15.00	☐ $17.00	☐ $30.00	☐ $32.00
PART TWO	☐ $15.00	☐ $17.00	☐ $30.00	☐ $32.00
COMPLETE EDITION	300 FT. ☐ $25.00	340 FT. ☐ $29.00	300 FT. ☐ $50.00	340 FT. ☐ $54.00

AVAILABLE TO MATURE ADULTS OVER THE AGE OF 21 YEARS ONLY!
NO FILM WILL BE SHIPPED TO UNMARRIED MINORS!

NOTICE!

This film was produced to teach married couples how to derive the utmost pleasure, excitement, sensation, ecstasy, satisfaction and happiness from sexual intercourse. It was definitely NOT produced for persons seeking cheap thrills or those seeking to "ogle" at films of persons engaged in sexual intercourse.

SPECIAL 8MM AND SUPER 8 VIEWERS AVAILABLE . . . . . *ONLY $5.00 EA.*

ORDER FORM

PENT-R BOOKS INC.
Box 1555, Grand Central Station, New York, N.Y. 10017

Gentlemen:

☐ Enclosed please find $_____

☐ Cash ☐ Check ☐ Money Order

☐ Enclosed please find $5 Deposit. Please ship C.O.D.

Please ship the following films.

"UNIQUE POSITIONS OF SEXUAL INTERCOURSE"

☐ 8mm Black & White-Part 1 ☐ Part 2 ☐ Complete Edition
☐ Super 8 Black & White-Part 1 ☐ Part 2 ☐ Complete Edition
☐ 8mm Full Color -Part 1 ☐ Part 2 ☐ Complete Edition
☐ Super 8 Full Color—Part 1 ☐ Part 2 ☐ Complete Edition
☐ 8mm Film Viewer ☐ Super 8 Film Viewer

I hereby represent that I am over the age of 21 years and I have signed to that effect below.

BY _____
signature

PRINT NAME _____

ADDRESS _____

CITY _____

Save Money! Enclose full payment and save postage and C.O.D. charges!

NOW AVAILABLE ON 8MM FULL COLOR OR BLACK & WHITE FILM

USEFUL POSITIONS OF SEXUAL INTERCOURSE

a visual aid to
SEX EDUCATION
featuring
A MARRIED COUPLE
together engaged in
SEXUAL INTERCOURSE POSITIONS

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Too many married couples are in the doldrums of once-again off-again "quickie" unembellished intercourse, with no variations and no experimentations! This book will take you out of the sexual rut and into the sunshine of fresh new youthful exciting sexual activity!

IMAGINE YOURSELF CONSISTENTLY SATISFYING YOUR SEX PARTNER FAR BEYOND HER OR YOUR WILDEST EXPECTATIONS! Why not enjoy all the wholesome, healthy thoroughly satisfying sexual delights that are available to you and your sexual partner? It's all so easy and so natural provided you forget the prejudices and fallacies of the bygone eras and recognize the fact that just as there is more to life than eating and sleeping, so there is more to sex than mere "quickie" intercourse! And this is precisely the point this book brings home to you with absolute clarity, detail and the frankest most up-to-date and modern information that is available to the adult general public!

THIS IS NOT A LONG-WINDED BOOK OF DULL THEORY! The "Photographic Manual of Sexual Intercourse" is a clear, live, dynamic, detailed *"HOW TO DO IT"* manual of step-by-step practical instruction. It teaches you, in plain language, direct and to the point, precisely what to do and how and when to do it to increase not only your own pleasure and satisfaction, but the pleasure and satisfaction of the one you love!

This book has one main purpose, to teach you how to derive the utmost pleasure, excitement, sensation, ecstasy and satisfaction from sexual intercourse. It is definitely NOT written for persons seeking cheap thrills or those seeking to "ogle" at pictures of persons engaged in sexual intercourse!

HERE'S WHAT THIS BOOK CAN DO FOR YOU!

1) It can help you develop a healthy life-long attitude toward sex! This healthy attitude can improve your general health, both mental and physical!

2) It can help you learn how to become a successful "lover-husband" and help you to achieve greater success and happiness in every aspect of your business and personal life!

3) It can help you learn how to experience maximum sexual satisfaction from the sex act.

4) It can help you learn how to correct any problem of sexual incompatibility in your marriage! You can learn what causes certain sexual problems and complications and how to avoid and deal with them.

5) It can help you learn the secret of enjoying sex love happiness in the years ahead. How to keep the fire burning and how to keep your sex life from becoming dull and monotonous!

You can learn numerous ways to prolong the act of intercourse. You can learn how to help your wife to achieve a fuller orgasm. How to arouse her to new found passion and how she can learn to arouse you to a new vitalized sexual relationship. You and your wife can both learn through words and photographs what to do and what NOT to do to become a more accomplished lover and sex partner.

And Now, you can also learn with this aid of text and photographs, how to obtain complete sexual satisfaction even *WHEN INTERCOURSE IS NOT POSSIBLE!* Yes, this is practically a complete guide to a happier sex-love life for married couples! This is the *HOW TO DO IT* book in the marriage and sex arts! It makes most other text on the subject obsolete!

SEXUAL KNOWLEDGE IS SEXUAL POWER! The vivid detailed photographs in this book show with utmost clarity how to adjust postures for the best possible matching of organs, how to make the sexual side of marriage more vibrant by introducing a variety of caresses and positions into the sexual act. Men and women with sexual knowledge are men and women with power to bring satisfaction and fulfillment to their love partners as well as to themselves. "The Photographic Manual Of Sexual Intercourse" will give you the knowledge and power to master all the wonders and aspects of sex. And remember, it is all available to you NOW!! All you have to do is use the enclosed order card!

This book is so definitive, so modern, informative, educational, so complete that it will be the last book on sex that you will ever buy because it will be one of the last books on sex that you are likely to need!

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A MAJOR BREAKTHROUGH IN SEX EDUCATION!

The Photographic Manual Of

Sexual Intercourse

BY L. R. O'CONNER -- INTRODUCTION BY ALBERT ELLIS, PH.D.

NOW FOR THE FIRST TIME, THE MYSTERY OF SEX IS UNLOCKED THROUGH THE AID OF OVER 256 PAGES — OVER 150 ACTUAL PHOTOGRAPHS *(Including 40 Full Page Posters & 16 Full Page Full Color Photographs)* OF A LIVE MAN AND A LIVE WOMAN TOGETHER ENGAGED IN SEXUAL INTERCOURSE POSITIONS! *THIS IS TRULY AMERICA'S FIRST COMPLETE "SEX COURSE" IN ONE VOLUME!*

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL?

Dear Sir,

No one is born with knowledge of how to engage in Sexual Intercourse! How then is one to learn?

The schools, up until at least very recently, have completely and purposely ignored sex education. Ask a school principal or school board official and he will say, "We leave that instruction to parents." Ask a parent if he or she is teaching sex education to their children and you may hear... "Don't worry, she has time"... or... "He'll learn" or "Ask his father, that's his job!" And if the parents fail, where is sexual instruction and knowledge to be obtained? Would you say the schoolyard or hall, the stoop, the candy store or back alley? Much of our youth has been forced to pick up bits here and pieces there! They are forced to overhear a story of someones' sexual experience. Sneak a look at a few pornographic pictures. Listen to a few lines dropped in a motion picture. Listen to T.V. comedians' subtle jokes. And above all shall we allow our youth to hear every old-wives-tale, every untruth, every misconception, every fallacy. And then, shall we pat ourselves on the back... for we have protected morality? We have protected our society from information on sexual intercourse? Naturally, on the day our son or daughter is married, by some miraculous happening, they will leave the wedding ceremony with a complete, accurate broad knowledge of sex. No one stands to take credit for this knowledge, no one seems to know how our newly married couple has obtained sexual knowledge. (In fact, no one knows IF our newly married couple has obtained sexual knowledge.) Let us all hope that our mythical couple has a deck of playing cards with them just in case!

And how about married couples? Perhaps they are not completely satisfied with their sex life. Perhaps sexual unhappiness is disturbing them and could in time break up their marriage. Where should they turn? Sexual unhappiness is something private, something personal, something one person does not quickly reveal to another. In far too many cases, a person remains silent, remains unhappy, and often many innocent bystanders are hurt as a result.

DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL? The divorce rate is fantastic! Premarital pregnancy is at its highest level. Our mental institutions are doing a thriving business. Adultery seems to be the number one topic in our books and magazines and our movie theatres are showing lesbian and homosexual features to packed houses. *DOES AMERICA NEED A PHOTOGRAPHICALLY ILLUSTRATED SEX MANUAL* we ask again? We think yes, most definitely yes and we have published one for the adult general public!

ARE THE PHOTOGRAPHS OF A MAN AND WOMAN ENGAGED IN SEXUAL INTERCOURSE REALLY NECESSARY?

We say yes... because it has always been and it will always be true that a picture is worth a thousand words!

Ask any educator and he will tell you that photographs, drawings and illustrations are indispensable aids to learning in just about any and all subjects. In fact, many times the text revolves around the pictures. Words or text alone are often unclear to the reader. He or she has to mentally visualize what the words are describing, which unfortunately many of us cannot do well or accurately. Our purpose in preparing this book is not to confuse, not to make points of information hazy or unclear. Our purpose is to get information, ideas and opinions across to the reader, so that the reader may evaluate them and come to his or her own conclusions. We feel that to publish our book *"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE"* without photographs would be a disservice to our readers and would confuse rather then enlighten them.

"THE PHOTOGRAPHIC MANUAL OF SEXUAL INTERCOURSE" is available to you if you are an adult over the age of 21 years. It was not written for beginners or minors, though much of the information it contains would be found useful by an adult who has the responsibility of teaching the young or inexperienced. This book was designed to teach men and women, even with years of sexual experience, what they may have been doing wrong and what they could and should do to give their mate new sexual pleasures, complete sexual satisfaction and to inspire their mate to new love, devotion and happiness.

The following brochure will give you additional details on the contents of the book. We have also enclosed an order form for your convenience.

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With my sincere personal good wishes,

Ronald Alvin

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Chapter II ..... Dimensions of Sex
Chapter III ..... Philosophy of Sex
Chapter IV ..... You and Sex
Chapter V ..... Male and Female Sex Organs
Chapter VI ..... Art of Love Making
Chapter VII ..... Positions for Sexual Intercourse
Chapter VIII ..... Female Oral Anal Sexuality
Chapter IX ..... Male Oral-Anal Sexuality
Chapter X ..... Female Technique for Satisfying the Male
Chapter XI ..... Male Technique for Satisfying the Female
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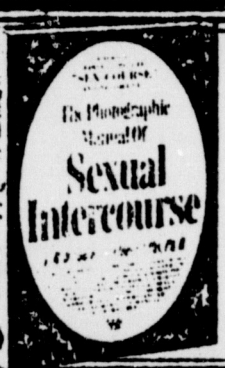

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DEFENDANT'S NOTICE OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant.

----------x

NOTICE OF CROSS MOTION.

Docket No.
72 C 612

The defendant upon the annexed affidavits, cross-moves the Court as follows:

1. To dismiss the action, without prejudice to restoring it to the calendar upon a further showing of a further alleged violation of the law, under the general principles of equity discretion.

2. To grant summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

3. To vacate the purported prohibitory order issued in this case.

DEFENDANT'S NOTICE OF CROSS-MOTION

4. To grant such other, further and different relief as to the Court may seem just and proper in the premises.

SIGNED:

Herbert Monte Levy

HERBERT MONTE LEVY
Attorney for Defendant
295 Madison Avenue
New York, New York 10017
689-2220

AFFIDAVIT OF HERBERT MONTE LEVY IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.,

Defendant,

----------x

ANSWERING AFFIDAVIT OF HERBERT MONTE LEVY, Esq.

Docket # 72 C 612

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

HERBERT MONTE LEVY, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the attorney for PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment, and in support of our cross-motion for summary judgment. I am personally and fully familiar with all the facts set forth herein.

At the outset, I note that this case is thoroughly moot, and that there is no case or controversy presently pending before this Court; any order entered by this Court

enforcing the prohibitory order (hereinafter sometimes PO) would be a useless order. As shown by the annexed affidavit of RICHARD S. SCHWARTZ, the defendant has taken every precaution humanly possible -- and more so -- using every possible available computer technology, to insure that second mailings are not made to persons in regard to whom PO's have been issued. Indeed, I myself have asked the Justice Department representatives whom I met with on this case on September 25, 1973 in Washington D.C. -- Messrs. Schiffer and Cogbil -- whether they had any suggestions as to how my client might take any better precaution to insure against violations, and they were silent on this score. Nor has the Assistant United States Attorney in charge of this case locally, Lloyd Baker, Esq., ever been able to suggest any additional precautions which my client should take.

Not only has my client taken every precaution to avoid the possibility of a second mailing, but my client's position, as stated in the annexed affidavit of Mr. Schwartz, is that it has no intention whatsoever of violating any PO, that under its existing computer technology it cannot violate the PO even if it wanted to; accordingly, there is not only no threat of violation of a PO, but no possibility

of violation of the PO (barring computer error). Certainly, a computer error could not be the basis for any finding of a contempt, nor could a human error, perhaps by feeding an erroneous entry into the computer, ever be deemed a contempt. Hence, since nothing can be accomplished by any order to be entered, and since there is neither threat nor possibility of an intentional violation of a Court order, there is no ground for equity to issue an injunction. Certainly, in its discretion, no injunction should issue. The case, too, is clearly moot, and we cannot see how there is any case or controversy within the meaning of the United States Constitution, which would give this Court jurisdiction.

Nonetheless, though we note this plea in bar because of lack of jurisdiction, because of lack of case or controversy, mootness, and no threat or intent by the defendant to act illegally, we now turn to other aspects of the matter.

Irrespective of what we have set forth above, and what we set forth below, this case -- along with all the other related cases -- must be dismissed for the failure of the Postmaster General to make the final finding and

order that he is required to make before any jurisdiction can attach in this Court. Thus, Subsection D of Section 4009 provides as follows:

> "If the Postmaster General, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, he is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a District Court of the United States for an order directing compliance with such notice."

Thus, the Postmaster General must determine that the order given -- the prohibitory order -- has been or is being violated. Yet neither the order in this case, nor in any of the companion cases, makes any such determination. In fact, no determination whatsoever was made by the Postmaster General. The order itself, a form order, merely recites as follows:

> "Satisfactory evidence having been presented that you, or your agents or assigns, acted in violation of the above-captioned Prohibitory Order, the Attorney General of the United States is being requested to give consideration to making application to a District Court of the United States for an Order directing compliance with the above-captioned prohibitory order."

AFFIDAVIT OF HERBERT MONTE LEVY

The mere claim, or fact, that satisfactory evidence was presented that defendant acted in violation of a prohibitory order, does not constitute a determination that defendant had violated or was violating the prohibitory order.

Satisfactory evidence could be presented to show a violation, and there could be evidence presented contra as well. Thus, there was simply no determination required by statute, but merely a recital that a prima facie case had been made out.This is totally different from a determination having been made of a violation.

Moreover, even had a determination been made, the statute required such a determination to be made by the Postmaster General. The determination here, such as it was, was made by a Superintendent of Mailing Requirements . We are aware of no delegation of authority to a Postmaster to make such a determination, and for such a local official to make a request to the Attorney General of the United States. Yet that is apparently what happened here. Moreover, if there were any such purported delegation pursuant to either regulation or rules, we know of no authorization for such delegation, and therefore, the entire proceeding, predicated upon this order, must fall as being without a foundation.

AFFIDAVIT OF HERBERT MONTE LEVY

The so-called Pandering Law, 39 U.S.C. Section 4009, gives complete discretion to the complaining addressee to determine whether the advertisement occasioning the Prohibitory Order (hereinafter sometimes "PO") is indeed a pandering advertisement. Of course, many complaining addressees, whose libido is aroused by non-sexual materials or who are eager to shut off the mailed flow of advertisements, have certified that an advertisement is a pandering one, when to a more reasonable person it might appear that such an advertisement was not pandering, i.e., neither erotically arousing nor sexually provocative. Thus, according to the Report of the Commission on Obscenity and Pornography (Bantam Books Edition, 1970), at p. 133:

> "Prohibitory orders have been issued against nearly 400 separate business firm names mailing sexually oriented materials; orders were also issued against dozens of business firms advertising nonsexual products."

However, according to information we have received, the Government has not sought even one Court order to enforce a postal prohibitory order against any of the dozens of business firms advertising nonsexual products. It has sought Court orders only when the first mailing was -- in the judgment of the Post Office -- pandering, i.e., of a sexually provocative or erotically

arousing type. Thus, for example, I have received information, and therefore allege, that while prohibitory orders have been obtained against mailings made by such organizations as the American Civil Liberties Union and the Practicing Law Institute -- neither of which mail any material which could conceivably be called sexually provocative or erotically arousing -- the Post Office and its successor, the Postal Service, have completely failed to go into Court to seek a Court Order enforcing a PO, even when there has been a violation of the PO. We defy the Government to show otherwise.

Thus, the Government has been selectively determining in which cases it should seek a Court order. Since nothing can happen to a mailer unless and until he violates a Court order. it is quite clear that Post Office censorship is now being used in the place and stead of the discretion of the complaining addressee. Thus, the First Amendment is violated, because as construed and applied, and in its operation and effect, the law vests the plaintiff and the Attorney General with the power to make discretionary

evaluations of material, and to determine which advertisers to move against, on the basis of the type of material advertised. The underlying statute is repugnant to the First Amendment and deprives defendant of its First Amendment rights, and is further repugnant to the due process clause of the Fifth Amendment, and further deprives defendant of liberty and property without the due process of law required by the Fifth Amendment, as well as depriving defendant of the equal protection of the laws under the said Fifth Amendment.

The administrative complaint issued by the Post Office did not state any cause of action, in that it failed to allege the date of the alleged second mailing, and in that it further failed to allege that such alleged mailing was made more than 30 days after the defendant's alleged receipt of the alleged PO.

As construed and applied, and in their force and effect, 39 U. S. C. Section 4009 and the Rules and Regulations promulgated thereto and thereunder, are repugnant to the due process of law clause of the Fifth Amendment and to the Sixth Amendment, and deprive defendant of liberty and

AFFIDAVIT OF HERBERT MONTE LEVY

property without said due process, and of its right under the Sixth Amendment to a trial by one who is impartial, to be informed of the nature and cause of the accusation, to confront and cross-examine the witnesses against it, and to have compulsory process for obtaining witnesses, the defendant not being given the "full hearing" afforded him according to the decision of the Supreme Court of the United States in Rowan v. United States Post Office Department, 397 U.S. 728 (1970), for the following reasons:

In every Post Office hearing, the hearing officer--an employee of the Post Office which is bringing the complaint--has been the prosecutor, the judge, the jury, and, to the extent to which he has introduced in evidence varying papers, a witness. Wherever the Post Office has purportedly determined that defendant or someone acting in its behalf has violated a PO, such determination has been made without the testimony of any person whatsoever identifying any materials or the dates of their being received or sent, thus without any legal evidence whatsoever. Despite repeated demand made therefor by the defendant here, no complaining addressee has ever been produced at an administrative hearing, nor

has any such person's testimony been permitted to be taken by deposition after due and proper requests therefor, the Post Office disregarding its own rules and regulations in regard thereto, and consistently failing to give any information whatsoever on how its own rules and regulations are being implemented. It is our understanding that the Post Office has never even inquired as to the willingness of the complaining addressee to appear and give testimony at a Post Office hearing. Thus, any mere indication by a complaining addressee, or any written (but invariably unsworn) statement by the complaining addressee,as to the date of receipt of the second mailing, has been accepted as uncontrovertable Gospel truth by the Post Office, with no opportunity being given to the defendant to show error or hostility on the part of the complaining witness.

Insofar as the plaintiff may rely upon the presumption of 39 U. S. C. Section 4009(f), such presumption is arbitrary, capricious, unwarranted and unreasonable, especially in view of the notoriously poor mail service of the last several years.

AFFIDAVIT OF HERBERT MONTE LEVY

The defendant has been denied his right to a hearing before the Post Office, and, unbelievable as it may sound, the Post Office has in effect taken a default against my client by reason of its own inefficiency, by reason of its own inability to properly transport the mail to itself. The Pandering Law requires that a demand for a hearing be filed with the Postmaster General within 15 days after the PO has been received by the mailer. The Post Office immediately began violating this provision of the law, by requiring the demand for a hearing to be addressed not to Postmaster General, but to the local Postmaster, or to someone at a local Post Office; this is clear from an examination of the text of the complaint issued by the Post Office. Thus, it was improper for the Post Office to take a default in any situation, since it required a filing with the wrong official.

Nonetheless, at the time that the administrative complaint was issued in this case, I had followed the following procedure:

The latest stamp on the back of the envelope containing the administrative complaint, I reasoned, was the earliest date upon which the PO was delivered to client; certainly,

it was a reasonable date to measure from, since obviously the Post Office could not have put a stamp on the back of the envelope after it had parted with its custody. Accordingly, when received from client, it was my practice to make a notation as to the deadline date for mailing in the demand for hearing, based on the latest Post Office stamp. Where a stamp showing date was put on by my client, I measured from this date of receipt. I calculated this date as being 14 days from the latest date stamped on the back of the envelope, except where the 15th day would fall on a Monday, and I would note my deadline as being the Friday preceeding that Monday. Appropriate adjustments were made if a holiday intervened. I would then make it my business to mail out my demand for a hearing on or prior to that deadline date.

This was my practice for many many months. The Pandering Law's effective date was April 14, 1968. I had no problems whatsoever with my practice until sometime in 1969 when I noticed that, although I was following my prior plan of action, I was suddenly the recipient of defaults all over the place.

AFFIDAVIT OF HERBERT MONTE LEVY

Upon inquiring as to why these defaults were being taken, I was orally advised by Post Officials (just who advised me, I do not now remember) that the Post Office had adopted a new construction of the statute, that they had now decided that they were going to take the words of the statute literally, and if the demand for hearing was not actually "filed" by arrival at the particular Postmaster's office on or before the 15th day, this would be considered a default. I protested that even Internal Revenue Service, when it requires that you file a certain tax return by a certain date, considers you to be on time if your mailing envelope is postmarked on the day set for filing, and that the Post Office was now claiming that it could put me in default by being slow and inefficient in the delivery of mail to itself. My protests were to no avail. Annexed hereto are copies of my correspondence in this regard, which were sent.

I might also perhaps add that I was extremely careful to always have my demand for hearing sent out on the date that the demand for hearing bore; that demand for a hearing was sent out, though it is not reflected in the "certified" file submitted by the Government, on

the day indicated on the demand for hearing, (copy annexed) and there was thus absolutely no reason whatsoever why, in equity or logic, the Post Office took a default solely because of its own inefficiency in delivering mail to itself.

In this connection, I note also that in this very case, I took an appeal from the decision denying a hearing as evidenced by the correspondence annexed hereto. So far as my records now show, that appeal was never acted upon. Thus, this proceeding is being brought to enforce a PO while an appeal is still pending in the Post Office Department.

The above also demonstrates that the file submitted by the Government herein is woefully incomplete.

Though the notice of motion recites that it is proceeding upon an annexed certified copy of the record of the proceedings in the Post Office Department, there is absolutely no copy of any certification whatsoever annexed to the papers that have been served upon defendant. Since no affidavit of any sort has been submitted with the Government's moving papers, there is thus simply no factual basis whatsoever upon which this Court can imply or find any fact whatsoever upon

which to base the injunction that the Government seeks. Accordingly, this proceeding must be dismissed. However, on the bare possibility that there is a certification in existence and that an inadvertent clerical error resulted in no copy of the certification being served with the notion papers (though this is unlikely, in view of the fact that amongst the numerous cases in which summary judgment papers were served upon defendant, there is frequently an absence of such certification), we nonetheless go on to note the following, in regard to the merits of the Government's application.

The Pandering Law, as it existed at the time of the alleged violation complained of here, did not require merely that a prohibitory order be issued as an order of the Post Office, or its present successor the Postal Service, but required that the prohibitory order be issued by the Postmaster General. In the case at bar, the prohibitory order was not issued by the Postmaster General.

In the case at bar, the prohibitory order was not issued by the Postmaster General. It was not even issued by a local postmaster. It was issued, on

the contrary, by the Superintendant of Mailing Requirements. We are not aware of any delegation to such an officer of the power to issue a prohibitory order, and if there was any such delegation of authority, pursuant to any rule or regulation, we are aware of no statute which would authorize such delegation to the Superintendant of Mailing Requirements.

We turn next to the problem of whether, even assuming that the record is properly certified and that the so called evidence of date of receipt of the second mailing was admissible, -- both assumptions being purely for purposes of argument, -- a violation of the prohibitory order has been made out. We note, at the outset of this facet of the argument, that there is completely lacking any proof whatsoever of the date of the second mailing, that such date was never alleged, and that therefore the defendant was never accorded due process of law under the Fifth Amendment and the right to know the nature and cause of the accusation against it under the Sixth Amendment. Just as significant, however, is the fact that the second mailing bears no

postmark whatsoever. Thus, the Government is forced to rely upon the statutory presumption found in Section 4009 (f), that a mailing received more than 30 days after the effective date of prohibitory order is presumed to have been sent in violation of the order. But, as we show in our brief, the effective date of the order is 30 days after it has been received, so that there is no presumption of a violation unless the second alleged mailing was allegedly received 60 days or more after the date of receipt of the prohibitory order.

We come next to the question of admissibility of the evidence of the alleged date of receipt of the second alleged mailing. In view of the improper certification of the record, we do not see how such proof can be admissible in any event; it is completely unsworn to, and it is the rankest kind of hearsay. The Government, in its brief, has not attempted to sustain the admissibility of this evidence. We expect, however, that the Government will urge that, assuming proper certification, it is admissible under the Federal Business Records Act (28 U. S. C. Section 1732 (a)) as a record kept in

the ordinary course of business, it being the ordinary course of business to keep such records. However, as we show in our brief, since the business involved is that of the Post Office, and the entries as to alleged dates of receipt were made by third persons, not by the Post Office, such rule does not apply. Moreover, even if such a rule did apply, in a normal case, it would not be applicable here, for this reason:

The normal reason for permitting evidence of business records to be admitted is that such records are inherently reliable. But in a prohibitory order-pandering case, we submit, such evidence is inherently unreliable. For several reasons, as follows:

a) The type of person who goes to the time and trouble of going to the Post Office to obtain a prohibitory order rather than merely tear up the material which offends him, especially when -- as here -- he has been given notice of the contents of the envelope (see the right hand bottom of the mailing envelope), is obviously the type of person who is sorely offended by sexually oriented material, the type of person, indeed, who very well

might, usually does, wish to see as much trouble caused to the mailer of such material as possible, even when, as here, the material involved has been held to be not obscene. This is graphically illustrated, despite all the hypocrisy of the Pandering Law, in the statement of one addressee, in the case purportedly pending in this Court of United States v. Pent-R Books,72 C 606, where the addressee noted as follows on the notice (request) for prohibitory order:

> "I request more than this (see below). This form evades the real issue. I have no minor children in my home, but YOU know this literature is reaching homes that have minor children. I AM NOT CONTENT WITH MERELY STOPPING THIS TYPE OF PORNOGRAPHIC MAIL FROM REACHING MY HOME; I EXPECT THE POST OFFICE AND JUSTICE DEPTS. TO FLUSH OUT THE SOURCE OF THIS OBSCENE MAIL, GET HIM OR THEM IN PRISON, AND STOP ANY OF THIS STUFF FROM BEING MAILED OUT AT ALL."

Similarly, in another purportedly pending case, in the memorandum from the Post Office Dept. dated June 3, 1969, the Postmaster recites that the complaining addressee, Mr. Griffis,

> "...is very concerned about this type of literature in the mails and offers his assistance and cooperation in trying to rid the mails of it."

And this is very obviously the attitude of the Post Office.

b) There may be community pressure, pressure by Post Office officials, or even by the local Postmaster or postman to attempt to make out a violation of a prohibitory order in order to cause more trouble for the mailer, in this emotionally-charged situation. The defendant is precluded from obtaining an examination of the complaining addressee in order to determine this, and there is simply no way in which the defendant can ever obtain such information. But this has happened. Graphic and dramatic proof of this -- of a direct Post Office attempt to influence an addressee to set forth a false date of receipt of mail so as to be able to find a violation of a prohibitory order, -- was accidentally uncovered during a hearing in another case involving this very defendant.

Thus, in the Post Office case entitled "In the Matter of: Violation of Prohibitory Order No. 633, issued against Pent-R Books, Inc., Respondent, on behalf of Thelma M. Moser, Complaining Addressee, by Postmaster, Phoenix, Arizona," Post Office Docket # R14-Pa64-633, Gary Langer, Esq., then of my office, at the Post Office hearing, asked to

look at the original folder. Upon it being examined, Mr. Langer noted that in the file, there was a card, obviously prepared by the Post Office, the bottom of which purported to show the date of receipt reading:

> "On August 27, 1969, I, Thelma Moser, received from the Pent R Book (sic) a second letter",

apparently signed by Thelma Moser. But immediately preceding this legend, also obviously prepared by the Post Office -- which had failed, however, to cut it off -- appeared the following:

> "In order to make a case against this firm we must have signed statement as to date of delivery of the second letter. The date given is an estimated date, but will give us the correct waiting period to carry on this complaint. An envelope is supplied for your convenience and no postage is necessary."

A Xerox copy of the card is being filed with this Court in United States v. Pent-R Books, Inc., 69 C 1362.

That this came from the Post Office is quite clear -- no one else would or could have given this "information" and supplied a postage-free envelope. The Post Office's clear motive was "to make a case against this firm (defendant)", and the date given was an estimated date, obviously "estimated" by the Post Office in order to give

them "the correct waiting period to carry on this complaint." Thus, the alleged date of receipt of the second mailing in that case was a totally fictitious date that the Post Office itself "estimated" in order to show a violation. (How could the Post Office make an estimation of that which was not within its own knowledge?) It will be noted that the alleged date of receipt, August 27, 1969, was completely typed in on the same typewriter which had written the instructions, and was obviously not done by Thelma Moser. Filed in 69 C 1362 will be a photocopy of the transcript of the stenographic minutes of the Post Office hearing on this matter.

In the complete absence of any opportunity to cross examine Thelma Moser, or the Postal officials involved -- an opportunity constantly requested by us, but always denied in each and every case, -- the defendant is simply at the mercy of the Post Office, when the Post Office thus unilaterally decrees the alleged date of receipt of the second mailing, to get a correct waiting period to carry on its complaint. The Post Office obviously picks a date convenient to show, in their legal judgment, a violation. How widespread this practice has been by the Post Office, it is impossible to

determine. (We should also note that the Post Office has consistently taken the position that receipt of a second mailing more than 30 days after receipt of the prohibitory order presumptively establishes a violation; though this position is incorrect, it explains why the Post Office does not always suggest a date of receipt of the second mailing more than 60 days later.)

Of course, this shows that when the Government seeks equity here, it does not come into Court with clean hands. Its hands are despicably defiled by its covert attempt to frame the defendant in the Moser case, an attempt disclosed only through its carelessness in not cutting off the top of the card in this instance. While this is not one of the cases presently pending in which summary judgment is sought, the simple fact is that there is no investigatory tool whatsoever by which we can ascertain how widespread this practice is and was. Denied the right to confront and examine a complaining addressee, which we contend is a denial of liberty and property under the due process clause of the Fifth Amendment and the denial of the right to cross examine and confront defendant's accusers under the Sixth

AFFIDAVIT OF HERBERT MONTE LEVY

Amendment, but with the proof of at least one attempted frame-up, we submit that the Government must either submit all of its complaining addressees and Postal Officials to confrontation and cross examination, or that equitable relief should be denied by the Court.

In my affidavit, I note that the Post Office hearing examiner sits as the witness, judge, and jury. An examination of the transcript of the minutes in the Moser case shows the vice of such multiple roles being combined in one person. The hearing officer was David S. Kelson, Esq., an attorney for whom I have the greatest respect and admiration. Yet even Mr. Kelson, when faced with indubitable proof of the Post Office framing a defendant, rose to the defense of his employer, the Post Office. It is, under the circumstances, a severe denial of due process to permit the same person to be witness, judge and jury, especially when he is employed, as here, by the same Department which makes the accusation of violation.

Thus, whatever exception there might be based upon inherent reliability of business entry records is totally lacking in this case. In this day of revelation

after revelation of improper conduct on the part of highest Government officials, and with at least one Postmaster having been found out to attempt to obtain false statements as to date of receipts of second mailings, it would simply ludicrous to hold that there was any inherent reliability in the alleged statement by an addressee of the date of receipt of the second mailing.

The alleged receipt purporting to show the date of receipt, purportedly signed by the complaining addressee, does not clearly show the date it was received. It merely recites "received," or a word or words to such effect. The next line sets forth the name of the addressee. This may well show the date the Post Office received the material from the complaining addressee, rather than the date that the complaining addressee received the second mailing from the defendant. It certainly is not proof that this was the date of receipt by the complaining addressee of the defendant's second alleged mailing.

The notation on the second mailing envelope recites that the "Envelope was open on arrival". It is therefore impossible to know through how many hands the envelope

passed before the addressee received it. To apply the (unreasonable) presumption would be most unreasonable in this case.

The proof of date of receipt of the second alleged mailing merely purports to show the date upon which it was received -- but in no way, shape or form does it set forth by whom it was received on such date. It could mean received by the Post Office, it could mean received by anyone, and there is simply no signature to even vouch for such a date of receipt -- even by the Post Office.

While the law as quoted in the Government brief now permits a complaint to be issued by the Postal Service, it is nonetheless true that the statute as it existed at the time of the issuance of the complaint in the case at bar required that the complaint be issued by the Postmaster General. So, too, with the order determining the violation. But in the case at bar, the Postmaster General did not issue the administrative order finding the violation, or any administrative order.

On the contrary, the complaint and order were not even issued by a local Postmaster, but by a Superintendent of Mailing Requirements.

AFFIDAVIT OF HERBERT MONTE LEVY

There has been neither showing nor claim that there was any statutory authority -- palpably lacking -- for the delegation by the Postmaster General to such person, an authority which would seem to be singularly lacking, in view of the fact that recommendation has been made to the Attorney General to seek a Court order upon the say-so not of the Postmaster General, a Cabinet officer, but on the say-so of a minor functionary. If there be such a delegation of authority, we are unaware of it, and further unaware of any statutory or other basis for such delegation.

This affidavit has been particularly directed towards the particular facts in this case. We also submit herewith an affidavit by Richard S. Schwartz, which will be filed in every one of the presently pending Pent-R cases, which attacks the proposed relief requested by the Government on numerous other grounds, common to all of the cases pending in this Court, against this defendant.

AFFIDAVIT OF HERBERT MONTE LEVY

For the reasons stated in this affidavit, as well as for the reasons set forth in Mr. Schwartz' more generic affidavit, we submit that the Government's motion for summary judgment should be in all respects denied, and that our cross motion for summary judgment should be in all respects granted.

Sworn to before me this
6th day of November, 1973

HERBERT MONTE LEVY

GILSOM SAFDEYE
Notary Public, State of New York
No. 3425478
Qualified in Kings County
Commission Expires March 30, 19 75

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY.

Burl C. Miller
Houston, Texas 77002

Pent-R Books, Inc.
Sample)
R-11, H-64

October31, 1969

October 15, 1969

("Form demand for levy")

Pent-R Books, Inc.

Norris

R-11, H-40

3. The contents of neither mailing are annexed to the complaint. Thus, the rules and regulations have been violated, it is impossible to determine whether the Prohibitory Order was violated, the complaint fails to state a cause of action, and client has been deprived of its constitutional rights enumerated in Paragraph 2. above.

HERBERT MONTE LEVY

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

November 12, 1969

William Lawrence, Esq.,
Assistant General Counsel
Mailability Division
Post Office Department
Washington, D.C

Re: Post Office Docket Nos: R 11-SD-39; PM-69-7131-122; PE-69-7003-121; PE-69-7237-124; R-11-PHT-69; R-11-PHT-89; R14-PA-74; R14-PA73-408; R-11, E-64; E-11, E-65;

I appeal to you, in each of these cases, from the Orders in the above matters. Please consider this as notice of appeal, and as incorporating by reference arguments previously made in correspondence in regard to such matters.

In the first four matters, I note that my Demand for Hearing was served by mail, by me personally, on November 3, 1969, and therefore should be considered as having been filed on November 4, 1969. In the first matter, the answer was sent air-mail by me on November 3rd.

In the fifth and sixth matters above, the form Demands were sent air-mail November 4, 1969, again by me personally.

In each of the cases referred to above, the date the material was sent by me was the day before the filing deadline, and the Orders were apparently entered on the filing deadline.

In the next two matters, form Demands were sent by me air-mail on November 4, 1969, as to Complaints which had been received on October 21, 1969. The last day for filing was November 5, 1969 in both cases. Nonetheless, Phoenix entered an Order on November 4, 1969, one day before the last day for the Demand to have been filed.

-7-

November 12, 1969

The last two matters involve Orders entered after the hearing denial; I had already appealed to you from the hearing denial in both these matters in my letter to you of November 6, 1969.

With kindest personal regards, I am,

Sincerely,

Herbert Monte Levy

HML/mol

P.S. I am sending copies of this letter to each of the Postmasters involved.

EXHIBITS, ANNEXED TO AFFIDAVIT OF HERBERT MONTE LEVY

LAW OFFICES
OF
HERBERT MONTE LEVY
295 MADISON AVENUE
NEW YORK, N.Y. 10017
(212) 689-2220

November 6, 1969

William Lawrence, Esq.,
Assistant General Counsel
Mailability Division
Post Office Department
Washington, D.C.

Dear Mr. Lawrence:

Re: Post Office Docket Nos. R-11, H-64;
R-11, H-65; R-11-FWT-86; R-11-FWT-87;
R-11-FWT-85; R-11-FWT-81; and R 11 NO-39.

Again, I must appeal to you from hearing denials and/or orders in each of the above entitled matters. Please consider this as a notice of appeal and permit me to incorporate by reference all points previously made in prior correspondence in regard to similar matters as well as the following points below:

In regard to Sample, I note that client received complaint on October 20, that hearing demand was sent October 31, and that a hearing denial was made on November 3 -- only 14 days after the date of receipt of complaint. This, of course, is entirely illegal.

As to Dodge, the same dates exactly apply.

As to Kuehner, Baird, and Wheeler, each of the complaints in these matters was received by client on October 20 and orders were entered on each of these matters on November 3, 1969, again only 14 days from the date of receipt. In each of these, I, myself had prepared and mailed out a demand for hearing on November 3, in my secretary's absence due to illness, and had sent each of these air mail, so that they were mailed air mail on the 14th day after date of receipt, and were it not for the slowness of the post office, should have been received by November 4, the last day for filing. In regard to the last two matters:

I am unsure whether I am appealing on the same ground, since a thorough search of our records reveals no reciept of any complaint in either of these matters. Therefore, I do not know whether these are cases in which there really was an inadvertent default, or whether we did make a demand for hearing, and an order was entered because of delays in the mails. I am sending copies of this letter to all the Postmasters involved, and I should greatly appreciate it if you and the Postmasters involved in the last two matters could advise me as to whether they ever did receive a demand for hearing. If they did not receive such a demand, we ask that the inadvertent default be opened; if it is denied, we claim that this would be a denial of due process, as would the absence of any rule or regulation permitting the opening of an inadvertent default.

I should perhaps add that I was on trial during the week ending Oct. 31, 1969, defending in a federal conspiracy case, through Wednesday of that week, and that on Thursday of that week I had to prepare an application for a stay to Mr. Justice Harlan of the U.S. Supreme Court, the application for the stay being Friday, October 31, 1969, on which day I went to Washington to do so. Under these added circumstances, as in the ordinary circumstances, any default would certainly be excusable.

I also note that I found on my desk, upon my return from Court, a file with a type of label I do not use, marked "FREDERICK, Robert MIN-1258 (Prohib O #55-8168)", which seems to emanate from Minneapolis, with other papers which seem to emanate from your office. I do not know whether this belongs to your office, and was inadvertently sent to me by your office or by Minneapolis. In any event, I am sending it on to you -- and I, at any rate, shall excuse your default!!!

Sincerely,

Herbert Monte Levy

HML/mol

AFFIDAVIT OF RICHARD S. SCHWARTZ IN OPPOSITION TO GOVERNMENT'S MOTION AND IN SUPPORT OF DEFENDANT'S CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PENT-R-BOOKS, INC.

Defendant.
----------x

ANSWERING AFFIDAVIT OF RICHARD S. SCHWARTZ.

Docket #

72 C 612

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

RICHARD S. SCHWARTZ, being duly sworn, deposes and says that:

I am and at all times hereinafter mentioned have been the Secretary of defendant PENT-R BOOKS, INC., sued herein as PENT-R-BOOKS, INC. as well as of RAS ENTERPRISES, INC. This affidavit is submitted in opposition to the Government's motion for summary judgment herein, and in support of defendant's cross-motion for summary judgment. I am fully and personally familiar with all the facts set forth herein.

AFFIDAVIT OF RICHARD S. SCHWARTZ

EXTRAORDINARY PRECAUTIONS TAKEN BY DEFENDANT TO AVOID OFFENDING RECIPIENTS OF ITS MAIL.

Upon the outside of all mailing envelopes sent by defendant, or upon the outside of an inner sealed envelope, there had always appeared a notice advising the recipient of the nature and content of the advertisement contained therein.* If the recipient did not want this material, he merely marked the envelope "Refused", as invited to by defendant, initialed it, and returned it to the postman or dropped it into a mail box which he was sure to pass sometime during the day, all at defendant's expense, after which defendant removed the addressee's name from its mailing list.

Defendant had thus avoided the necessity of an addressee viewing materials which he preferred not to be exposed to, unlike the requirements of the Pandering Law where, if the complaining addressee is to be at all honest, he must open and view the materials. We had also avoided the time consuming necessities inherent in the addressee obtaining the Prohibitory Order and following through for a complaint.

* This practice ceased in 1970, when the Goldwater Amendment to the Postal Reorganization Act of 1970 required the legend "Sexually Oriented Ad" to appear on the envelope or on an inner sealed envelope. Defendant then followed that law. See Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp.297 (E.D. N.Y. 1971).

We emphasize that defendant had always done this -- starting long before the effective date of the Pandering Law.

Defendant has thus always been extremely careful of the sensibilities of persons who might otherwise be offended. Incidentally, lest the Court think that the more than 200,000 prohibitory orders that have been received by the defendant seem excessive, we note that defendant has mailed perhaps more than 10,000,000 advertising pieces, and thus the percentage of prohibitory orders received by it from all its mailings is some 2%. And though some 200,000 people purportedly objected to our ads, more than 450,000 copies of the book advertised have been sold. We further note that the advertisements, involved herein, for "The Photographic Manual of Sexual Intercourse", have been ruled non-obscene and constitutionally protected by Judge Masterson of the U. S. District Court for the Eastern District of Pennsylvania, United States v. Stewart, unreported, Crim. No. 69-162, Order dated October 13, 1971. Under these circumstances, we note that if 39 U.S.C. §4009 or its successor be applied to the defendant, who is shown here to be engaged solely in publishing, selling and distributing materials protected by the First Amendment, with a warning notice described

above, such application is unreasonable, arbitrary and capricious, repugnant to the due process of law clause of the Fifth Amendment and to the First Amendment, and deprives defendant of liberty and property without due process of law and constitutes an unreasonable, capricious and arbitrary restraint on First Amendment rights, especially in view of the severe limitations on First Amendment rights necessarily encompassed in any attempt to avoid a conflict with 39 U.S.C. §4009 -- as we shall show below. For the price of compliance with §4009, as we note below, is that many mailings cannot be made to persons who wish to receive such mailings, and therefore the statute prevents mailings to persons who desire to receive them, thus interfering with their -- and defendant's -- First Amendment rights -- a possibility never considered by the Supreme Court of the United States in Rowan, a case which was instituted in the early days of the Pandering Law, without any opportunity whatsoever for the Supreme Court of the United States to have any but the sketchiest information on how the law worked out in practice.

AFFIDAVIT OF RICHARD S. SCHWARTZ

SINCE THE DEFENDANT HAS NEVER WILLFULLY VIOLATED A PROHIBITORY ORDER, AND SINCE THE DEFENDANT HAS TAKEN ALL POSSIBLE PRECAUTIONS TO AVOID SECOND MAILINGS, INCLUDING DEPRIVING PERSONS WHO WISH TO RECEIVE ITS ADVERTISEMENTS OF THE RIGHT TO DO SO, AND SINCE DEFENDANT NOT ONLY DOES NOT THREATEN TO MAKE AN ADDITIONAL MAILING BUT HAS MADE IT VIRTUALLY HUMANLY IMPOSSIBLE TO DO SO, AN ORDER SHOULD NOT ISSUE ENFORCING THE PROHIBITORY ORDER.

The so-called Pandering Law went into effect on April 14, 1968. At that time, no one knew for certain what its operation and effect would be. But after more than 5 years of experience with this law, the defendant knows, and shall hereinafter demonstrate to this Court, that this law cannot be complied with except by disregard of defendant's own First Amendment rights -- which defendant has had to disregard in order not to be in conflict with the law. We thus claim that the law, so construed and applied, in its operation and effect, does violate the First Amendment.

At no point whatsoever did defendant ever willfully make a second mailing in violation of a prohibitory order; at the present time, and for at least the last three years, because of the computerization that the defendant has used,

we submit that not only does defendant have no intent of violating the prohibitory order here, but it could not do so even if it wished. It is our contention that in the complete absence of any willfulness in the second alleged mailing, plus the fact that there cannot be a willful mailing hereafter, an order of this Court should not issue.

As we shall show in some detail at length below, there is no doubt of defendant's good faith and diligence in attempting to comply with the Pandering Law. The cases involved here all deal with second alleged mailings in 1969, in which year Pent-R made about 10,000,000 mailings. But long prior to the 1968 effective date of the Pandering Law, we had set up a computerized system, solely in order to be able to completely comply with the terms of the law. That system was set up by the President of defendant, Ronald A. Stewart, with my assistance, through arrangements made with a computer house and a system was devised as shall be set forth below. The cost of running that computer operation in the year 1969 was some $62,068. We are advised by the computer house, that it now estimates that it used the services of the equivalent of 25 people working full time for 6 months --

which it computes as the equivalent of one person working 3000 days, or 24,000 man hours -- in order to set up and process the system. As we note at length below, difficulties were encountered because of the use of rented lists, and rented lists were finally abandoned unless they were on computer tape, where the computer could prevent second mailings. The computer operation became more and more refined as we had more experience with it. The use of duplicate mailing labels was eliminated in 1970, when it was found that this resulted in violations of prohibitory orders. The system itself was finally programmed in 1971, and is still carefully programmed, to guard against second mailiings to such an extent that the computer eliminates even mailings that have not been prohibited. Thus, as we learned of mistakes which took place, we corrected them at once, and took vigorous steps to prevent recurrence of these mistakes or further mistakes in the future. The new system of control greatly improved the situation. It is and has been as nearly perfect as a system can be.

Even originally, as we first set up the computer programming, we had a great rate of success with it. Thus,

although we received something more than 200,000 prohibitory orders, the complaints of violation which have so far been upheld by the Post Office -- which bends over backwards to be fair to itself, -- number only approximately 500. Thus, even giving the Post Office the benefit of every doubt, even now the Government charges that only some one quarter of one percent (0.025%) of the prohibitory orders issued to Pent-R were violated. Moreover, every time we have received a complaint from the Post Office, we have once more fed the name and address of the complaining addressee into the computer, so that no further mailings would be made to such complaining addressees. We have fed these names and addresses into the computer for a third time upon receipt of a Complaint filed in this Court.

Even if an injunction were issued in this case, it would and could have no effect by way of insuring better compliance in the future. With all the efforts we have made, it would be unjust to us to do so, in view of our good faith, and not in the public interest.

Actually, our success ratio is even better than the figure of 1/4 of 1% violations -- or 99 3/4% compliance.

Thus, we note the following: All mailings for defendant were handled by another corporation, RAS Enterprises, Inc., of which Mr. Stewart is again the President and I am again the Secretary, as here. The mailings made by RAS Enterprises, Inc. are almost all of a natur that some would undoubtedly find erotically arousing or sexually provocative, so that the mailings of virtually every other corporation which had been processed by RAS have resulted in prohibitory orders. However, though we estimate that Pent-R, plus all the other corporations serviced by RAS (including RAS itself) have probably had approximately 248,500 prohibitory orders issued against them, there were only seven administrative complaints of violation issued in the first half of 1972, none in the second half of 1972, nor in the first 6 months of 1973. Since then, there have only been three administrative complaints, all issued against an affiliated division of RAS, Companion Products; no material whatsoever was furnished in regard to one of the complaints, so we are at a loss to know whether or not it was justified; in the two cases where some materials were annexed to the complaint, it is perfectly clear that the prohibitory order was not violated. Thus, though there

are approximately some 248,500 prohibitory orders issued and outstanding against all such corporations, there have been only some 10 administrative complaints of violation between January 1, 1972 and date -- an alleged violation rate of less than 0.004%*. Our computer house has estimated the expected rate of computer error to be 1/2 of 1%, so that it is plain that, by falling below this rate of error, defendand (and its computer house) have done a superlative job. There is simply nothing else that we can do, of which we are aware, to avoid offending against the statute. Our good faith effort to comply with the law is perfectly clear. I now detail the course of our computer campaign.

Of course, before the Pandering Law became effective in 1968, defendant had tooled up in order to be able to comply with it. It immediately, upon receiving its first prohibitory order, began to comply with the law, in the following way.

* This rate assumes that all ten administrative complaints were valid. Since we know that at least two of them were invalid, we have at most eight valid complaints,(only one of which was received after July 1, 1972); assuming the eight are all valid, the violation rate since January 1, 1972 is cut from 0.004% to 0.003%.

AFFIDAVIT OF RICHARD S. SCHWARTZ

After a prohibitory order was obtained in the Post Office, it was opened by defendant, and dated with the date of receipt (subject, of course, to error -- a lot of them in the beginning, where we failed to put on the date of receipt). A photocopy of each prohibitory order was made, which was sent to the computer house, or "Listing House", while defendant retained the original for its files. At the computer house, the names and addresses of persons to whom mailings should not be made, as they appeared in the ordering part of the prohibitory orders, were typed. These were then read by a device known as an optical scanner, whose function it is to translate the written material into electrical impulses which are put, and then stored upon, a magnetic tape, in a symbolic form. The Pent-R mailing list was put up on a tape itself. When a name appearing on a prohibitory order also appeared on a tape for the Pent-R mailing list, the matching of the two tapes would prevent that person's name from being printed out by the computer on the mailing list which the computer prints out. At the same time, these were sorted out by zip codes.

Two problems became apparent. The first problem was with rented lists. The mailing lists, owned by, sold to and

rented to defendant were and are lists of names and addresses of intellectual, mature adults who had previously received from others, similarly situated to the defendant, advertising or other materials similar to those disseminated by defendant. They were and are mailing lists of names of persons such as doctors, dentists, attorneys, accountants, druggists and other professional people, and owners or proprietors of various businesses thus assuring as much as possible that none of the addressees were or are minors. Because of their nature, many of such mailing lists owned by defendant, and those rented or purchased from others by defendant and others, overlap, and the names of the same persons frequently appear on both such lists.

In view of the many prohibitory orders received by the defendant, it was physically impossible to visually compare, by human vision, the names of addressees thereon with the names in any lists rented by the defendant, especially since the names on rented lists were usually listed in random rather than in alphabetical order. Since the use of an optical scanner and computer to eliminate names on a list involves the copying of the names (by their translation into symbols

stored on the magnetic tape), and since the owner of the rented list will not permit that list to be copied, the defendant found that it was impossible, simply impossible, for it -- or others -- to comply with a prohibitory order insofar as the use of a rented list is concerned.

Moreover, many mailing lists were not available for purchase, being available for rental only, no matter what the price. When a list is sold, the price is many times the rental charges. The operation and the effect of the statute has been that, after defendant learned that it could not comply with the law and also use a rented mailing list, the defendant was forced to abandon the use of most rental mailing lists. It could only use a rented mailing list if and when the owner of such list had himself put the list on magnetic tape, so that the computer could be used to check off the names of persons as to whom prohibitory orders were issued and outstanding. Thus, the defendant has been forced into the position where it can mail to persons on mailing lists, which are available for rental, only if and when such lists are on tape. The defendant has followed this practice since 1970. Defendant estimates that, because of this limitation, it

and the corporation which processes its mailings, and which now owns its mailing lists -- RAS ENTERPRISES, INC. -- have been deprived of the right to mail to somewheres between 5,000,000 and 10,000,000 persons. Even allowing for a 20% of overlap of names on mailing lists already used with those on such rented mailing lists, the operation and effect of the statute has been to prevent mailings for First Amendment materials to approximately 8,000,000 persons within the United States within the last three years.

Further, in this connection, we note that on occasion, the rented mailing lists would not be delivered to the defendant or its computer house, but the owner thereof would insist upon having names and addresses on such list printed or typed by itself or others and sent to separately owned letter shops or mailers where the material to be mailed is inserted in the envelopes, or is otherwise packaged, and mailed. We have included in our estimate above such mailing lists which also are obviously unavailable to the defendant, because of its effort to comply with the Pandering Law.

We submit that the Pandering Law was not intended to apply to a second mailing made to a name on a list rented

by the sender. If it was intended to so apply, then defendant, who had exercised the greatest care, would be deprived of liberty and property without the due process required by the Fifth Amendment, since the only way to avoid second mailings to a name on a rented list is by so limiting the use of rented lists as set forth above, and thus effectively restricting the freedom of speech and press of the defendant herein.

There was a second problem which became apparent. In order to print out an entire protester-free list, the list would have had to be printed out anew at least once every 30 days. This particular aspect of the matter itself would have cost at least a minimum of $18,000 per year. To circumvent this cost, three carbon copies of each print-out were acquired at the comparatively nominal costs of $2.00 per 1,000 names. If the mailing label on the second alleged mailing is identical to that on the first alleged mailing, this occurred because the mailing was made due to the second mailing having been made before a new protester-free list could be printed out, it being impossible and illogical to coordinate dates of mailing with the effective dates of prohibitory orders.

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Accordingly, in order to comply with this unconstitutional provision of the law, the use of carbon copies of mailing labels was abandoned by defendant in 1970.* Thus, the law unreasonably and substantially illegally prohibited the use of the mails for First Amendment purposes.

A third problem which was run into was that the optical scanner cannot exercise any judgment. Thus, if the name appearing on the prohibitory order was R. A. Jones, but the mailing list contained the name of Richard A. Jones, the computer would simply not recognize the name.

To avoid this problem, and similar problems, the only way to prevent second mailings was to so program the computer that all persons with the same last name at the same address should not get mail. This was done in 1970.

Of course, the slightest variation of an address would have rendered this an illusory protection; thus, if our

*Such use has recently been resumed, but only to the limited extent that carbon copies are made of names and addresses only of those who have bought from us, as to whom the Pandering Law does not apply, Cf. Pent-R Books, Inc. v. United States Postal Service, 328 F. Supp. 297 (E.D.N.Y. 1971). And in any event we have finally worked out a method for their use anyhow, so as to still comply with prohibitory orders.

attorney's wife Marilyn W. Levy, Esq., who at about that time had an address of 1133 Sixth Avenue, had appeared on a different mailing label as having an address of 1133 Avenue of the Americas, New York City -- the same actual address, but different to a computer -- a mailing to her could not have been prevented.

In the meanwhile, the Supreme Court of the United States had upheld the constitutionality of the Pandering Law though, as we noted, without any knowledge of the operation and effect of the law. The defendant, even though it had pioneered the way in presenting a method by which an unwilling recipient could get its name removed from its mailing list without any expense and minimal effort, had to even further circusmcribe its own First Amendment rights in order to even better comply with the law.

To even better comply with the law, an improvement was made on or about November 14, 1970. Under this new system, the computer sought out the first five letters of the last name of the addressee, and automatically removed from the mailing list the name of any person at the same address who has the same first five letters in his last name -- even if such

other persons had requested mailings from the sender, and even if their first names were different and were in fact different people. Thus, if one Murray Schwartz at 295 Madison Avenue, New York City, had obtained a prohibitory order, the computer would have automatically prevented mailings to all persons at that address the first five letter of whose last name are SCHWA. Thus, in order to comply with the law, mailings to Irving H. Schwartz and Herman Schwartzman as well as to Schwartz, Schindler & Levy, all existing persons or firms at that address, would have been prevented.

Thereafter a still further improvement was made, effective in the Spring of 1971. This eliminated from the RAS mailing lists the names of all persons as to whom the following three factors also appeared in the Government list supplied under the Goldwater Amendment or in the names supplied by the Prohibitory Order:

A. The first five letters of the last name coincide.

B. The first three digits of the street address coincide, and

C. The zip codes coincide.

Thus, in addition to weeding out the names and addresses of the persons mentioned above, all persons within the zip code area (10017) whose last names began with SCHWA at any address in that zip code area which began with 295, would be eliminated from the RAS list. Thus, any Schwartz, Schwartzman, Schwartzberg, Schwarz, etc. at 295 East 42nd or 295 East 41st, etc., etc., would not receive mail, even though some of such persons might be customers.* The problem is also solved of preventing a mailing to say,1133 Avenue of the Americas, when the address we were given was 1133 Sixth Avenue, since the numbers of the street address control. We have thus succeeded in avoiding the type of problem set forth in the annexed page from "Popular Photography."

Of course, there is still opportunity for error. A mistake may be made by the typist who types up the material for the optical scanner, in putting down the name and/or

* Our computer house has advised us that at Co-Op City, a gigantic housing development in New York City which our computer house programmed, there were last names duplicated in 35-40% of the cases. We note that should a Schwartz in Co-Op City obtain a prohibitory order, many hundred (possibly several hundred) other Schwartz's in Co-Op City could not get a mailing from us -- and that this would continue perpetually even after the one objecting Schwartz moved out.

address; a mere speck of dust on a computer tape may prevent the elimination of one or many names. It is estimated that there will be a computer error factor of one half of one percent (0.5%) which cannot be eliminated. (The Government, indeed, has made many errors in the tapes it supplied RAS under the Goldwater Amendment).

I should perhaps also add that when we receive a complaint of a violation of a prohibitory order, we once again feed the name and address of the addressee into the computer, even though in almost all probability it is already on our tapes, and though the second mailing was due to matters beyond our control (e.g., the second mailing was to a new address when the Postal Service had only ordered cessation of mailing to an old address).

That our program seems to be working is evident from the fact that in November, 1971, only four complaints were issued -- one of which seems to be explainable only by computer error, two of which were caused by Post Office error, and one of which cannot be explained because we have not been furnished with sufficient documentation, according to advice from Herbert Monte Levy, Esq., our attorney.

In October, 1971, only one complaint was received. So, too in September, 1971.

Thus, all of the corporations having their mail processed by RAS Enterprises, Inc. including that of Pent-R Books, Inc., in order to comply with the law, have taken precautions which result in elimination of mailings even to persons who may desire such mailings. We would estimate that that would include some 50,000 persons.* Under such circumstances, in addition to the clear violation of its First Amendment rights, it is further clear that there would not or could not be any willful violation of a prohibitory order. Accordingly, it would seem that this case would be moot, because any judgment, when rendered, could not have any practical legal effect upon the then existing controversy. Indeed, there is simply no controversy here.

---

* This does not take into account persons in the Armed Forces who may be deprived of mailings, it would seem that one person named "Smith" or "Jones", by obtaining a prohibitory order, would effectively preclude all persons with such a respective last name at such APO address from receiving any mail from us. We have no idea how many persons have the same APO address; we are thus unable to come up with a figure for this problem.

To further note the good faith of defendant, we note that, as already stated, Pent-R did attempt to comply with all prohibitory orders, constantly tightening its preventative measures designed to insure that mail would not reach those who did not want to receive its mail. Moreover, when the Goldwater Amendment came into operation, requiring that publishers disseminating sexually oriented advertisements must subscribe to a list of persons who did not want to receive such ads, defendant was the first -- and for a long time the only -- subscriber to that list, which subscription cost it $10,000 a year.* While continuing to comply with that requirement, Pent-R tested the statute before a three Judge Federal Court; during the course of those proceedings, the Government constantly modified its regulations, under the

*In analyzing the first such list supplied by the Government, we ascertained that 621 names on that list of 31,604 names had bought sexually oriented materials from one of the plaintiffs there on one, two, three or four occassions previously. Thus, some 2% of those on the Government list are prior buyers. Since the Government list includes names of children, if we assume 2.5 children per adult name, then some 5% on that list were prior buyers from plaintiffs there. We cannot even estimate how many on that list were prior buyers from other sources of supply. This further demonstrates Mr. Levy's thesis that persons are pressured into acting to avoid the receipt of ads for sexually oriented materials.

Goldwater Amendment so that that case was rendered moot and dismissed. One of the modifications followed Pent-R's practice, begun long before the statute was enacted or became effective, of giving a warning notice of the type of contents on an inner sealed mailing envelope. Pent-R Books, et al v. U. S. Postal Service, 328 F.Supp. 297 (1971). To further put this matter in context, we note that although some 200,000 prohibitory orders were issued against Pent-R, only approximately 750 complaints were ever made under the Pandering Law, according to the estimate of our attorney and the informal estimates of Postal Service officials -- an alleged violation rate of 0.375% at most. Of the some 750 cases in which hearings were held, approximately 1/3 of these resulted in dismissal in the complaint, while approximately 500 of the cases so far have resulted in the complaint being upheld by the Post Office, with or without a hearing, or some alleged 1/4 of 1% (0.025%) of alleged violations.

The defendant is a thoroughly law abiding corporation. We would estimate that it has spent by this time at least some $300,000 in order to comply with the Pandering Law, as well to comply with the Goldwater Amendment. Its vast

expenditures of money, made in an effort to comply with the law, show that it is not a law breaker, but a law observer. To issue an injunction in any case such as this, which has become completely moot by the use of such a computerized method that not only are mailings to protesters avoided, but also mailings to persons who are not protesters, would be to have the Court issue a useless order -- and an unconstitutional one at that.

I understand that it is hornbook law that a statute must be construed so as to avoid raising questions of constitutionality. We believe that we have raised substantial questions as to constitutionality in the operation and effect of the Pandering Law -- not involved in the Rowan case --, which must be faced if this Court is to issue an order. Succinctly stated, it is a fact that the law cannot be complied with except by denying the defendant its right to communicate to those who would receive its communications, and the right of those who receive such communications to receive them. We submit that the law should be so construed in this case as to mean that there is complete mootness in the case at bar, in order to avoid the raising of these questions.

AFFIDAVIT OF RICHARD S. SCHWARTZ

We have bent over backwards to make any possible settlement with the Government. It has never suggested any deficiency in our computerized system for compliance with prohibitory orders. It has never suggested any improvement. Since 1971, at least, it has been fully informed of our system's working. What more does the Government want from us? Our standard of attempted compliance, our actual rate of better than 99 3/4% compliance with prohibitory orders, speak for themselves. No injunction need be granted. It could have no possible effect whatsoever. Any practical suggestions for improvements in our computerization program will be gratefully accepted. Can we do more?

I now turn to some details.

I understand that according to the purported so called certified file in this case, the purported return receipt for the administrative Post Office complaint is dated However, as noted above, it was our practice and remains our practice to stamp or otherwise indicate on the envelope in which the complaint was contained, the date of its receipt by us. The date of its receipt by us, according to the envelope, which will be annexed hereto, is Oct. 20, 1969, though the date

of receipt according to the purported return receipt is October 17, 1969. If we are correct in our date of receipt, then it is patent that the demand for hearing, which our attorney's affidavit indicates was sent on the date it bears, was sent in time, and that we were improperly denied a hearing before the Post Office Department in this case, a default having been taken without just cause. This raises an issue of fact warranting a trial.

A comparison of the way in which the first mailing was addressed, that is, the physical set up thereof, to the way in which the second mailing was addressed, clearly demonstrates that the second mailing was to a name on a rented list. This is obvious because of the differences; had the second mailing been to the same mailing list as the first, the two mailings would have been identical, letter for letter, type style for type style. Since they are not so identical, it is plain that one of the mailings, probably the latter, was to a rented list. For the reasons we have set forth above, we do not believe that a prohibitory order can be violated, constitutionally, by mailing to a name on a rented list.

AFFIDAVIT OF RICHARD S. SCHWARTZ

WHEREFORE, deponent prays that the plaintiff's motion for summary judgment be denied, that defendant be granted summary judgment dismissing the complaint, and that the prohibitory order be vacated.

RICHARD S. SCHWARTZ

Sworn to before me this
8th day of November, 1973.

GILSOM SAFDEYE
Notary Public State of New York
No. 34[illegible]
Qualified in Kings County
Commission Expires March 30, 19..75

POSTAL SERVICES CENTER
MAIN POST OFFICE
HOUSTON 2, TEXAS

UNITED STATES POST OFFICE
HOUSTON, TEXAS 77002

OFFICIAL BUSINESS
P-87

PENALTY FOR PRIVATE USE TO AVO
PAYMENT OF POSTAGE, $300

ADMINISTRATION OF 39 U.S.C. 4009

REGISTERED

36953

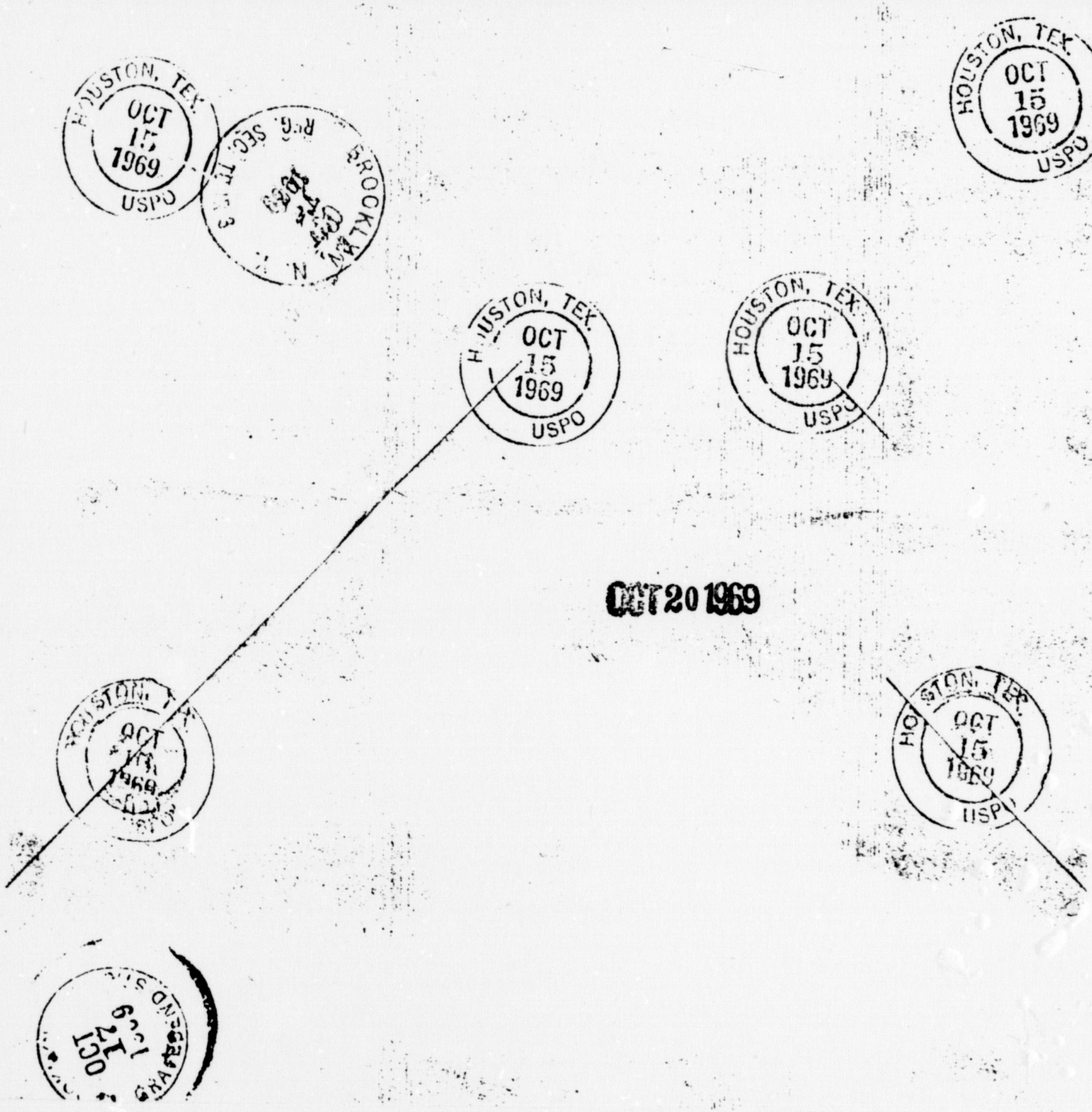
RETURN RECEIPT REQUESTED
SHOWING ADDRESS WHERE DELIVERED.

Pent-R-Books

Box 81

Brooklyn, N. Y. 11223

EXHIBITS, ANNEXED TO DEFENDANT'S CROSS-MOTION.


HOUSTON, TEX.
OCT
15
1969
USPO
OCT 20 1969

EXHIBITS, ANNEXED TO DEFENDANT'S CROSS-MOTION

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NEWSFRONT *continued from page 14*

in convention here that Kodak is trial marketing three-solution process for color prints. It may replace present five-solution process. Kodak is concerned about water pollution and silver waste. New process "reduces effluent volume by 40 percent," has bleach-fix that is "completely biodegradable, can be regenerated and allows efficient silver recovery." Seiler said company is working hard to make non-toxic chemicals and cut level of BOD_5. He said Kodak has managed to formulate Ektaprint C stabilizer without zinc, another potential pollutant.

NEW YORK—*Our man Rothschild to speak at communication parley:* Among panelists at 15th annual Wilson Hicks International Conference on Communication Arts (formerly Miami Conference) will be *Popular Photography*'s senior editor, Norman Rothschild. Other participants at meeting, slated for April 28-30 at U. of Miami, Coral Gables, Fla., include Gilbert M. Grosvenor, editor and vice president of *National Geographic*; Erich Hartman of Magnum; Richard Grossman, president of Grossman Publishers; Tony Vaccaro of *Look*; Inge Morath, free-lance photographer and wife of playwright Arthur Miller; Burton McNeeley, undersea photographer, John Schearer, free-lance photographer; Larry Schiller, film maker; Paul Huc, photographer from Holland; Martin Duffy, manager of design and media for A.T.&T. Co.; Marcello Ablaza, official photographer to the president of the Philippine[s]; Dr. Wesley Clark, dean of the School of Journalism, Syracuse University, and Jon Olson, staff photographer of *Life*. Conference also serves as annual meeting for American Society of Magazine Photographers.

NEW YORK—*With deep regret, we note the following deaths:*

Charles Rado, founder and president of Rapho Guillumette photo agency that represents photographers throughout the world. Rado often fostered work of unknown photographers, many of whom were exhibited at Museum of Modern Art.

Dr. Emanuel Goldberg, scientist, author, and retired director general of Zeiss Ikon AG. He emigrated from Paris to Israel, where he founded laboratory for applied optics, now known as EL-OP. He wrote *The Fundamentals of Reproduction Technique* and *The Structure of the Photographic Image*.

A. Aubrey Bodine, photo director of *The Baltimore Sunday Sun* magazine, and winner of hundreds of international photo awards. He had worked with *The Sun* papers for nearly 50 years. Many of his best pictures appeared in *My Maryland*.

Kyoichi Sawada, U.P.I. photographer, killed in Pnompenh, Cambodia, while covering the war. He won Pulitzer Prize in 1966 for picture of Vietnamese mother fleeing enemy attack. ●

MEMORANDUM AND ORDER BY DOOLING, D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

-against-

PENT-R-BOOKS, INC.,

Defendant.

: 72 C 612
(SAMPLE)
:
MEMORANDUM
:
and
ORDER

- -X

Appearances:

LLOYD H. BAKER, Esq. (DAVID G. TRAGER, Esq., United States Attorney, of Counsel) for Plaintiff

HERBERT MONTE LEVY, Esq., for defendant

DOOLING, D. J.

In this action to obtain an order commanding compliance with a Post Office Prohibitory Order issued under 39 U.S.C. § 3008 (formerly § 4009), the plaintiff has moved for summary judgment on the administrative record, and defendant has cross-moved on affidavits. The principal objections of defendant are those raised and disposed of in 69 C 1362, 72 C 583 and 69 C 1290, and what has been said in those dockets need not be repeated here.

The only point made in this case by defendant apart from those passed on in the above dockets is that defendant's allegedly timely mailed Request for Hearing

MEMORANDUM AND ORDER BY DOOLING, D. J.

was ignored. It was mailed to the Postmaster at Houston, Texas, from New York City, fourteen days after the receipt of the complaint. In this case, however, remand to consider the timeliness of the mailing is not appropriate. The form of objections allegedly sent to the Postmaster raised no points not resolved against the defendant in the dockets referred to above.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted and defendant's cross-motion is denied. A form of judgment has been approved for entry by the Clerk.

Brooklyn, New York
July 26, 1974.

U. S. D. J.

JUDGMENT.

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D. N.Y.
JUL 29 1974
TIME A.M. P.M.
CLOSED
M'FILMED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

PENT-R-BOOKS, INC.,

Defendant.

72 C 612
(SAMPLE)
JUDGMENT

This action came on for hearing on the cross-motions of the parties for summary judgment before the Honorable John F. Dooling, Jr., District Judge, and the motion of plaintiff having been granted and that of defendant having been denied in the decision duly rendered, it is

ORDERED and ADJUDGED that defendant PENT-R-BROOKS, INC. its agents and assigns (1) refrain from any further mailings to P. SAMPLE, 3711 San Felipe Road, Houston, Texas, 77027,

or intended for the indicated address by any variation of addressee designation, such as, but not limited to, occupant, householder or resident; (2) immediately delete the above-named party from all mailing lists owned or controlled by it, its

JUDGMENT

agents or its assigns; and (3) immediately abstain from any sale, rental, exchange or other transaction involving mailing lists bearing the name of the party named above.

Brooklyn, New York

July 26, 1974.

Approved:

U. S. D. J.

CLERK

The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

THE U.S. COURT OF APPEALS::: FOR THE SECOND CIRCUIT

USA

VS

PEBT R BOOKS

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF N.Y. , ss:

BERNARD S. GREEBERG being duly sworn,

deposes and says that he is over the age of ~~xvxtotN~~ 21 years and resides at 162 E. 7th St NY, NY

That on the 10th day of Nov, 1 75 19 at

he served the annexed Consolidated Joint Appendix upon

David G. Trager, U.S. Attorney, 225 Cadman Plaza, Brooklyn, N.Y.

in this action, by delivering to and leaving with said attorney

~~xxxxx~~ one true cop thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this 10th day of Nov, 1975 19

Bernard S Greeberg

Roland W. Johnson

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4507705
Qualified in Delaware County
Commission Expires March 30, 1977